



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT 139 OF 2002

NAJMA MOHAMMED PLAINTIFF

V E R S U S

POLLMANS TOURS AND SAFARIS LTD DEFENDANT

R U L I N G

As the plaintiff was adducing her evidence in chief during the hearing of this case, she sought, through her advocate, to rely on the plaintiff's supplementary list of documents filed in court on 13th July, 2006. Mr. Inamdar for the defendant objected to reference to those documents on the ground that the plaintiff had filed a list of documents and stated on oath that she had no other documents, and no application was made before the filing of the supplementary list.

Dr. Khaminwa for the plaintiff argued that no application was made to strike out the supplementary list of documents, and submitted that no prejudice would be suffered by the defendant if the documents were referred to. He further submitted that we have an open system of justice and no rule says that a party cannot file a supplementary list.

In his reply, Mr. Inamdar submitted that the plaintiff had stated on oath that she had not any other documents except those filed in court on 9th February, 2004, and that there is prejudice because the plaintiff is seeking to introduce documents through the back door.

The only issue to be determined is whether the plaintiff should be allowed to refer to her supplementary list of documents filed in court on 13th July, 2006. Her initial list of documents was dated and filed on 9th February, 2004, under O. X rule 11A of the Civil Procedure Rules. Paragraph 4 of the document filed in court states-

“The plaintiff has not now and never had in his (sic) possession custody and power of his (sic) agent or advocate any other document whatsoever relating to the matter except the documents in the First and Second Schedule hereof.”

This statement is repeated formally in paragraph 5 of an affidavit in Verification of the List of Documents sworn by the Plaintiff on 21st April, 2004. Paragraphs 2, 5 and 6 of that affidavit provide as follows-

“2. THAT my advocates on record did file on my behalf a list of documents on the 9th of February 2004 as now annexed hereto and marked NM-1.

5. THAT I verify further that I have not now and never had in my possession, custody or power any other document relating to this (sic) other than those falling within the ambits of schedule two of list of

documents herein attached.

6. *THAT what I have stated herein is true to the best of my knowledge information and belief.”*

Against that background, the hearing of this case commenced on 7th June, 2006. On 13th July, 2006, the plaintiff filed a supplementary list of documents which is now the subject of this objection.

The document filed in court on 13th July, 2006 clearly states that the list of documents therein supplements the plaintiff's list of documents filed on the 9th February, 2004. Yet, in the document filed on 9th February, 2004, the plaintiff was explicit and unequivocal that she had not then and never had in her possession custody and power any other document whatsoever relating to this matter except the documents in the first and second schedules of that list. This statement was repeated on oath in paragraph 5 of the affidavit sworn by the plaintiff on 21st April, 2004 in verification of the list of documents. She stated under oath that she did not then and never had in her possession, custody or power any other document relating to this matter other than those stated in the document filed on 9th February, 2004.

For the plaintiff to subsequently file another list of documents in 2006, which she had clearly deposed that she did not have, is an affront to the oath she took on 21st April, 2004. To do so unilaterally and without leave of the court was an abuse of the court process. And if such a move became standard practice, it would make it very difficult, if not impossible, for counsel to prepare their cases with any certainty. They would never be sure of the documents they will have to contend with in any given matter at any given time.

For this reason the list referred to as supplementary list is not properly before the court, and I direct that the plaintiff should not refer to it.

It is so ordered.

Dated and delivered at Mombasa this 29th day of September 2008.

L. NJAGI

JUDGE