

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA A
T NAIROBI (NAIROBI LAW COURTS)

Civil Suit 2012 of 1999

SIMON KIMONDO MUBEA.....LAINTIFF

VERSUS

RITA S. WAUDO.....DEFENDANT

R U L I N G

This is an application by the defendant seeking orders that the name on the City Council be added as a Defendant or interested party in this suit. In support of the application Rita Shidunduhu Waudo has sworn an affidavit giving grounds.

The facts which gave rise to this litigation briefly may be stated. The plaintiff filed this suit against the defendant on 18th October 1999. The defendant upon being served with summons entered appearance and filed a defence on 1st November 1999. Subsequently the defendant's defence was struck out by the Deputy Registrar on application by the plaintiff. The defendant appealed to the High Court but the appeal was dismissed by Visram J. on 22nd September 2004. The suit property was sold to the plaintiff by the City Council and the plaintiff is the registered proprietor of the same. It is against this background that the defendant applies to have the name of the City Council added as the second defendant. But Mr. Macharia for the plaintiff submitted that for the court to grant the orders sought, the suit must be pending and there are issues to be determined. The defendant's defence having been struck out, and Interlocutory Judgment entered and the suit set down for formal proof, and the hearing having commenced, the instant application is too late.

The defendant's defence having been struck out and there being no defence on record, an application for orders to add the City Council as a second defendant is not sustainable. The defendant ought to have appealed against that order and have the defence restored before she could bring this application. Having come to that conclusion this application fails. I do not see how, in the circumstances, it would be proper to exercise my discretion to grant this application.

This application is dismissed with costs.

Dated and delivered at Nairobi this 17th October day of 2008.

J. L. A. OSIEMO

JUDGE