



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE 666 OF 2002**

**STANLEY MATHAARA MUCHUI & ANOTHER.....PLAINTIFF**

**VERSUS**

**MAKOMBOKI TEA FACTORY AND OTHERS.....DEFENDANT**

**RULING**

Before me is the Notice of Preliminary Objection dated 20<sup>th</sup> May, 2002. In my view, the Learned Counsel for the Defendant Mr. Ngomo, in effect stressed ground No.5 of the Notice of Preliminary Objection which attacks the validity of verifying affidavit to the Amended Plaintiff dated 30<sup>th</sup> January, 2003.

The verifying affidavit of the 1<sup>st</sup> Plaintiff namely Stanley Mathaara Muchui is sworn on 4<sup>th</sup> February, 2003. It is signed by him and an unnamed person with his Identity card number shown against the signature.

Underneath the said signature it is typed in different font i.e. “**Authorisation.**”

There are two Plaintiffs in this suit and the affidavit of the 1<sup>st</sup> Plaintiff avers that he was swearing the affidavit on behalf of his co-plaintiff whose name is Peter Kinyuri Muriu.

The said 2<sup>nd</sup> Plaintiff has not filed any written consent for the 1<sup>st</sup> plaintiff to swear an affidavit on his behalf. Order VII Rule (2) of Civil Procedure Rules stipulates.

**“(2) The plaint shall be accompanied by an affidavit sworn by the Plaintiff verifying the correctness of the averments contained in the Plaintiff.”**

As per Order VII sub-rule (3), the court, on application, may strike out any plaint which does not comply with sub-rule (2) of the said order, which is already quoted hereinbefore.

I was urged by the Learned Counsel for the plaintiffs to use my inherent power under Section 3A of Civil Procedure Act and also to consider to receive the affidavit under order XVIII Rule (7) of Civil Procedure Rule.

The verifying affidavit sworn on 4<sup>th</sup> February 2003 accompanying the amended Plaintiff filed on 5<sup>th</sup>

February 2003 has serious irregularities.

First of all it is signed by two persons although it is supposed to have been signed by the 1<sup>st</sup> Plaintiff Stanley Muthaara Muchui. Secondly there is no written consent by the 2<sup>nd</sup> Plaintiff to the swearing of the verifying affidavit by the 1<sup>st</sup> Plaintiff.

Even if I am inclined to accept the signature above the words “**Authorization**” is a consent by the 2<sup>nd</sup> plaintiff, I do note that the signatures of Peter Kinyuru Muriu the 2<sup>nd</sup> Plaintiff appearing on verifying affidavit appended to the Original Plaintiff and on his affidavit in support to the Chamber summons dated 18<sup>th</sup> April, 2002 are, on naked eyes, totally different to the one signed over the words **Authorisation**.

The Learned Counsel for the Plaintiffs Mrs. Kimiti candidly agreed to the said position.

The verifying affidavit accompanying the amended plaint of 30<sup>th</sup> January, 2003 is thus incurably defective and the defects are not technical nature and is not only a formality.

I thus strike out the amended plaint dated 30<sup>th</sup> January, 2003 with costs.

Dated and signed at Nairobi this 28<sup>th</sup> day of February, 2007.

**K.H. RAWAL**

**JUDGE**

**28.2.07**