



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE 1651 OF 2001

SHAMAS CHARANIAPLAINTIFF

VERSUS

HARIT SHETH ADVOCATESDEFENDANT

RULING

The defendant is an Advocate of the High Court of Kenya practicing in the name and style of **HARIT SHETH ADVOCATE**. He is the defendant in this matter, in which he is sued for a liquidated claim of Kshs.32 million. The suit was filed sometime in the year 2001. The parties have been largely engaged in multiple counter applications.

The present application is the one dated 14th December, 2004 and it is under **Order 6 Rules 13(1) (d) and 16** of the Civil Procedure Rules. The application seeks that;

“The plaintiff’s Notice of Motion application dated 26/4/2004, the plaintiff’s purported Amended plaint filed on 26th July 2004, the plaintiff’s amended plaint filed on 23/7/2004 and the plaint filed on 29th October, 2001 all be struck out and this suit be dismissed with costs to the defendant”.

The grounds in support of the application are that the purported signatures appearing on the purported affidavits of the plaintiff;

(a) sworn on 4th May, 2004 in support of the plaintiff’s application dated 4th May, 2004.

(b) sworn on 20th July, 2004 in purported verification of the purported amended plaint filed on 26th July, 2004 and

(c) sworn on 26th November, 2004 in support of the plaintiff’s application dated 26th November, 2004

do not conform with the plaintiff’s known signature and are calculated to deceive and mislead this Honourable court into falsely believing that the said affidavits were all signed by the plaintiff when in fact they were not.

It is also contended that the plaintiff has obtained orders from this court based on a forged affidavit and has applied for further orders based on a forged affidavits. It is further alleged that the plaintiff or those acting in his name being guilty of forgery and of deceiving and misleading the court, the plaintiff’s entire

suit is irreparably tainted with illegality and is consequently a gross abuse of the process of this Honourable court.

Lastly it is the contention of the applicant, that the plaintiff's conduct or that of those acting in his name borders on contempt of this Honourable court and indeed amounts to serious criminal offences requiring prosecution and appropriate punishment and disentitles the plaintiff from seeking any reliefs from this Honourable court.

The application is supported by the affidavit of **Mr. Harit Sheth** Advocate, who is the applicant herein. The Advocate depones in his affidavit that he has been advised by **Mr. S. M. Mweu**, handwriting expert and document examiner that the purported signatures of the plaintiff appearing on the purported affidavits of the plaintiff i.e.

(1) sworn on 4th May, 2004 in support of the plaintiff's application dated 4th May, 2004

(2) sworn on 20th July, 2004 in purported verification of the purported amended plaint filed on 26th July, 2004 and

(3) sworn on 26th November, 2004 in support of the plaintiff's application dated 26th November, 2004,

do not conform with the known signatures of the plaintiff appearing in his affidavits of 29th October, 2001 and 1st November, 2002.

It appears **Mr. S. M. Mweu** had been instructed to verify and examine the correct signatures of the plaintiff and whether the various signatures appearing in the three alleged documents conform with the known signatures of the plaintiff. According to the applicant the said signatures appearing in the three documents are forgeries and are calculated to deceive and mislead this Honourable court into falsely believing that the said affidavits were all signed by the plaintiff when in fact they were not.

The report, which is the basis of the present application, was prepared by **Mr. S. M. Mweu**, a document examiner from Hawk eye Technologies. The report is addressed to the Advocates of the defendant **M/S A. N. Ngunjiri & Co. Advocates**. The reports states;

"I have examined and compared the questioned signatures on the affidavits purported to have been sworn on 4th May, 2004, 20th July, 2004, and 26th November, 2004 marked AI, A2, A3, with the known signatures on the affidavits sworn by Mr. Shamas Channia on 29th October, 2001 and ON 1ST November 2002 marked B1 and B2.

As a result of the examination carried, I could find no agreement between the questioned signatures on the affidavits marked A1 – A3 and the known signatures on the affidavits marked B1 – B2.

The disputed signatures are written in a totally different style which does not conform with the style of writing or the known signatures".

The report in my understanding does not exactly say that the plaintiff did not sign the alleged documents, which the defendant is concerned to be offensive. The basis of the application is the report prepared by **Mr. S. M. Mweu**, who is qualified handwriting expert and document examiner. The short and long of the report is that it states that the disputed signatures were written in a totally different style which does not conform with the style of writing on the known signatures. The defendant is saying that one set of signatures by the plaintiff are in totally different style from the known style of the plaintiff. In essence it is the agent of the defendant who is making the determination of what belongs to a particular style of the plaintiff. The plaintiff had no opportunity to know the basis and criteria used in the said determination. Although **Mr. Mweu** claims to be qualified handwriting expert and document examiner, he has not stated the nature and extent of his qualification and expertise in handwriting and document

examination.

This court cannot take the allegations, statement and report prepared by **Mr. Mweu** on its face value. To be qualified in handwriting and document examination, one must have acquired the knowledge either through experience or learning in classroom or both. It is unfortunate **Mr. Mweu** does not state the source of his knowledge to determine whether the various alleged signatures of the plaintiff are different in styles. The expert does not state what he took into consideration to arrive at the conclusion he reached. He says that he has carried out an examination but in my humble view it is not enough to say that I have carried an examination. It is incumbent upon the examiner to state that having carried out an examination and comparison, certain features were missing from the signatures on the alleged offensive document. That has not been done by this particular expert.

In my understanding an expert is a person knowledgeable or skilful in a particular area. The exercise of that knowledge or skill must demonstrate that the person has the ability in the area in a manner that can satisfy the consumer of his services. He must state the nature and conditions which are present or missing in the area where he had carried out an examination. In my view he must give an explanation and interpretation of the discrepancies, descriptions and/or differences, which are missing or different with the style of writing on the known signatures as compared with the questioned or allegedly forged style.

The expert in his report says that the documents compared are written or signed in different style but does not say it was not signed with the hand of the plaintiff. In my view a person who does not disclose the source of knowledge and qualification can be rightly termed as a quack. I agree with **Mr. Mungu** Advocate that an expert must be qualified. And qualification requires experience and certificate to make him competent to make an expert decision. I also agree with **Mr. Mungu** Advocate that there is no expert report which can persuade this court to arrive at the decision suggested by the defendant. The author of the report which is the basis of the present application does not state how he arrived at the decision in his report. In my view the alleged report is a disjointed piece of information which cannot be a foundation to dismiss the plaintiff's suit. It is not a detailed inspection, investigation or examination to warrant this court to follow the road suggested by the defendant. The failure of **Mr. Mweu** to state what he did to arrive at the decision he reached is a fundamental defect on the validity and competency of the whole report. I am in agreement with the Advocate for the plaintiff that the report and maker looks suspect. In my view there is nothing credible about the opinion of **Mr. Mweu** who is alleging that the signatures of the plaintiff are of different styles but with no factual or documentary basis.

It is not enough to say that I have examined and compared the questioned signatures on Item A with Item B and in my opinion the styles are different. You must state in detailed manner the features and descriptions which are missing in a particular examination. What was examined and what was compared must be brought before court to enable the court to make a just and fair decision.

All in all, I have refused to be guided and/or persuaded by the suspicious report made by **Mr. Mweu**. In any case the issues concerning the affidavits which were not allegedly signed by the plaintiff could have been raised at the right and opportune time. In my view the objection to the said affidavits were to be raised earlier and since it was not done, then the defendant is caught up by the principle of estoppel. It is therefore my decision that the application has no merit, it is an attempt to exasperate the plaintiff so that the case is lost or delayed.

I agree with **Mr. Mungu** Advocate that the conduct of the defendant is wanting. It is wanting because he has made every attempt possible to defeat or delay the case of the plaintiff. This application is part of the diversionary tactics employed by the defendant to avoid a determination of the case on merit. As an Advocate the defendant should show a good example to other litigants by allowing the court an opportunity to determine the case on its merits instead of using suspicious characters to prepare a worthless report.

The upshot is that the application dated 14th December, 2004 is dismissed with costs. I direct parties to list the suit for hearing on priority basis.

Dated and delivered at Nairobi this 27th day of June, 2007.

M. A. WARSAME

JUDGE