

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA**

Civil Appeal 34 of 2003

BOG KIBABII HIGH SCHOOL.....PLAINTIFF

VS

SIMON MABONGA.....DEFENDANT

RULING

When the application dated 18/6/2007 came up for hearing on 11/7/2007, Mr. Onchiri for the respondent requested that the same be heard in chambers as there were some issues he wanted to bring to the attention of the court and which he felt could not be brought out in open court. What transpired following our discussion off the record was that there was an allegation that the hearing notice dated 4.6.2007 which was purportedly served on Mr. Onchiri notifying him of the hearing of the application dated 4.6.2007 was never served on Mr. Onchiri as alleged. The affidavit of service dated 7.6.2007 purportedly sworn by one Michael Simiyu a process server – was false and that the same had not been deposed by him. The said Michael swore an affidavit of protest dated 3.7.2007 where he denies having received the hearing notice in question for service. He also denies having sworn the affidavit of service in question. Mr. Onchiri too denied having appended what is said to be his signature on the hearing notice to acknowledge service. In my view, these allegations were very serious and so I summoned Michael Simiyu to appear before me to be x-examined on his affidavit of protest. He was cross examined by both counsel. I was left in no doubt that he was telling the truth and that he had not signed the affidavit of service in question. The signature on that document and also the signature on the hearing notice were indeed forgeries. Understandably, this matter is already in the hands of the police and I will not say much. I will however note with utter disappointment that Mr. Waswa who should have shed light in this matter chose to be very oblique in his submission. At the end of the exercise, all the court was able to conclude is that both Mr. Onchiri's and Mr. Michael Wanyonyi's signatures were forged in a bid to mislead the court that Mr. Onchiri had deliberately failed to appear in court and hence the court's decision to proceed with the matter ex-parte. I am relieved however to note that, the orders which I gave ex-parte were of no consequence as they had already been overtaken by events. It saddens me deeply however to realize that an officer of the court can be privy to such machinations. I hate to imagine that an advocate of the court can go to those lengths of deceit and dishonesty in order to get orders from the court.

This is an honourable profession and all parties that are privy to its processes must be beyond reproach. Like Ceaser's wife, they must be beyond suspicion. When we allow parties to think that they can forge documents in order to get orders from the court, then our profession ceases to be honourable and becomes a circus with the players as nothing more than clowns. My cry to the parties herein and to all other parties who are in the Administration of Justice is to uphold our oath of office as indeed I believe we have all sworn to dispense justice fairly. We invoked God's name when we took that oath. He hates lies, he abhors deceit and dishonesty. Let us not invoke his wrath for he has commanded us not to invoke his name in vain.

Having said so, I must say that I am not convinced that Mr. Waswa is oblivious of what happened in this matter. If he was, he would have ascertained who the culprit was and handed him over to court on a platter. I need not say more. I will however be very uncomfortable dealing with Mr. Waswa further in this matter. I appreciate that a party has a right to be represented by an advocate of his own choice. In this case however, my feeling is that Mr. Waswa's continued

appearance in this case will only compromise or impede his client's pursuit of justice. Let him give this brief to any other counsel. I disqualify him from any further appearance before me in this matter. This is purely in the interests of justice for all parties in this matter.

W. KARANJA

JUDGE

DELIVERED and dated this 26th day of July, 2007 in the

presence of: Mr. Onchiri for the applicant and Mr. Michael Wanyama Simiyu.

Mr. Waswa was absent.