REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1009 of 2004

STEPHEN KARANJA

BENARD M. IRIA

FRANCIS KAMAU

ESTHER MURUGI KAHANGI

FRANCIS KARIKA……………………….…..………PLAINTIFFS

VERSUS

THOMAS BARASA……………..………………….DEFENDANTS

RULING

The Respondent filed this application by way of notice of motion under Section 3A Civil Procedure Act, Order L Rule 13(2) Civil Procedure Rules. The application is dated but not signed.

The Respondents have raised objection to the application on the ground that the same is incompetent as it has not been signed in accordance with Order 6 rule 14 Civil Procedure Rules.

The applicant on the other hand maintains that since it is supported by an affidavit which is duly signed the application is proper and the same should be saved as it is going to be expensive for the applicant to file another application. It is their stand that the application can be saved by invoking Section 3A Civil Procedure Act to ensure that ends of justice are met and to prevent abuse of the due process of the court. Further that order 50 rule 14 also comes in to assist in saving the application more so when order 6 rule 14 does not rule out the saving of such an unsigned application.

Section 3A of the Civil Procedure Act quoted by the applicant is simply a Section through which inherent powers of the Court can be invoked to enable the court make such orders as may be necessary for the ends of justice or to prevent abuse of the due process of the Court. This court has judicial notice of the fact that the inherent powers of the court are invoked where there is no provision of law covering the particular situation that the court is inquiring into. Herein Section 3A cannot be invoked to aid the applicant as there is a clear specific provision of law in the name and style of order 6 rule 14 Civil Procedure Rules covering issues of unsigned pleadings. Operation of which shuts out the operation of Section 3A Civil Procedure Act.

Counsel for the applicant relies on order 50 rule 14 which provides that once an application is filed the same is to be deemed to be property filed. But there is nothing in this provision which excuses un signed processes and allow them to pass as being properly filed. Order 50 rule 12 only excuses failure to quote the correct provisions of law but not failure to sign.

Order 6 rule 14 Civil Procedure Rules provides *"Every pleading shall be signed by an advocate, or recognized agent as defined by order 111 rule (2) or by the party if he sues or defend in person. The operative words here are "shall be signed"*. It is therefore mandatory to sign pleadings presented to court. As submitted by the Respondents Counsel an application since it is a statement of demand falls within the meaning and definition of a pleading. There is no exception.

Assistance in resolving the issue can also be derived from case law on the subject. In the case of **SHAH AND ANOTHER VERSUS INVESTMENT AND MORTGAGES BANK LIMITED AND 2 OTHERS [2001] KLR 190.** The appellant had been sued in the High Court by the Respondent bank on a suit involving a claim of a sum of money interest. They filed an application in that court asking it to dismiss the suit on the grounds that the Respondents plaint did not comply with the mandatory provisions of order VI rule 14 of the Civil Procedure Rules in that it was not signed.

In its defence the respondent bank had stated that its advocate ha prepared a total of six affidavits, one of which was deliberately left without a signature because it was intended to be retained in the advocates office file. However out of inadvertence, the unsigned copy was left with the court along with one signed copy.

The high court through Mbaluto (J) found in favour of the Respondent bank that even it there was no signed copy of the plaint on record, that was not a ground for dismissing the suit and secondly by the time the matter came before the court, there was a signed copy of the plaint on the court file. As it had also been argued that the summonses issued in the case and served on all the appellants had been invalid as they gave at least ten days to enter appearance, the judge found the summonses defective and ordered fresh ones to be issued.

On appeal it was held inter alia that the object of the legislator in requiring that a plaint be signed either by Counsel or the party suing or filing any other pleading is to make the party take ownership and responsibility for the contents of the plaint or pleading.

(2) If a plaint is not to be signed as required by order VI rule 14 then there would not be any use for the law to require that the plaint should contain an averment that there are no and has not been any court proceedings between the parties on the same subject matter and to be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in it (under VII rule 1(3) and rule 2).

(3) The position in Kenya then seems to be that a party who files an unsigned plaint runs a very grave risk of having that plaint struck out as not complying with the law.

In a High Court case **MUTUKU AND 3 OTHERS VERSUS UNITED INSURANCE CO. LTD [2002] 1 KLR 250** the plaintiff instituted a suit against the defendant. The defendant filed a defence and amended it later. The amended defence was unsigned. On realizing the mistake the defendant filed a signed defence without leave of the court. The Plaintiffs filed an application to strike out the defence on the basis that it was unsigned and therefore not a defence at all and the amendment thereof was illegal as it purported to amend that which did not exist in law and that the purported amendment was made and filed without leave of Court. It was held inter alia that an unsigned pleading cannot be valid in law. It is the signature of an appropriate person which authenticates a pleading and an un authenticated document is not a pleading of anybody, it is a nullity.

The net result of the decision of the above quoted cases, one from the High Court and another by the Court of Appeal is that the position in Kenya is that in order for a pleading to be valid in Kenya it has to belong to somebody. The right of belonging is acquired through a signature. The application subject belongs to nobody as it has not been signed. That being the case the Counsel applicant has no locus

standi to defend it. Further it is clear that an unsigned pleading is a nullity. Being a nullity it cannot give rise to any reliefs in favour of any party.

For the reasons given the application dated 14.5.2007 but un signed and filed on the same date is found to be in competent and a nullity and the same is struck out with costs. The costs were questioned by Counsel who is on record for the litigant and so the said Counsel will personally pay costs of the struck out application.

DATED, READ AND DELIVERED AT NAIROBI THIS 13TH DAY OF JULY 2007.

R.N. NAMBUYE

JUDGE