

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

(MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

MISC APPLI 128 OF 2005

KENNETH KIPLAGAT

(T/a KIPLAGAT & ASSOCIATES) ADVOCATE/APPLICANT

V E R S U S

NATIONAL HOUSING CORPORATION..... CLIENT/RESPONDENT

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

The Advocate herein applied by notice of motion dated 4th May 2006 under section 51(2) of the Advocates Act, Cap. 16 for judgment for his taxed costs. When the application came up for hearing the client raised a preliminary objection to the application in terms of a notice in that regard dated 8th June 2006. The objection was that the law firm of KIPLAGAT & ASSOCIATES no longer exists in law, and that therefore any proceedings in that name are null and void.

I have considered the submissions of the learned counsels appearing and the cases cited. It was conceded by the learned counsel for the Client during arguments that it was the firm of Kiplagat and Associates that was instructed by the Client, and that there is no legal bar to an advocate practising under more than one name, though that would not be desirable. It was also conceded that the best evidence for the non-existence of Kiplagat & Associates would have been from the Registrar of Business Names, and that there was no such evidence.

But of more importance, Kiplagat & Associates, in existence or not, would not be a legal person. That is why the present proceedings were instituted by KENNETH KIPLAGAT (t/a KIPLAGAT & ASSOCIATES), a natural person. Furthermore, in partnership law, a partner can sue for the debts due to a partnership even if the partnership has since been dissolved.

The preliminary objection is not well-taken at all; it lacks merit. It is hereby overruled with costs to the Advocate. There will be an order accordingly.

DATED AT NAIROBI THIS 11TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 14TH DAY OF SEPTEMBER, 2007