

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

Civil Case 1130 of 2006

LAWRENCE N. MWANGI (T/a Lawrence Mwangi & Co., Advocates).....PLAINTIFF

V E R S U S

1. THE STANDARD LIMITED

2. KWENDO OPANGA

DEFENDANTS

R U L I N G

The Plaintiff herein has raised a preliminary objection to the Defendants' application by chamber summons filed on 16th January, 2007. That application seeks under Order 6, rule 13(1) (b) and (d) of the Civil Procedure Rules (the Rules) an order to strike out the plaint. The objection is taken mainly upon the ground that the application and the supporting affidavit pre-date the filing of the suit herein, and that therefore the application is incompetent and incurably defective. The suit was filed on 27th October, 2006.

I have considered the submissions of the learned counsels appearing and the one case cited. Indeed the application and the supporting affidavit pre-date the filing of the suit as they are dated 16th January, 2006. But bearing in mind the date on which the application was filed, that is 17th January, 2007, the appearance of the year 2006 in the date of the application and the supporting affidavit cannot but be inadvertent typographical errors. In any event, under Order 50, rule 14 of the Rules, an application is deemed to be made when filed. As already seen, the application was filed on 17th January, 2007. And under Order, 18, rule 9 of the Rules, unless otherwise directed by the court an affidavit shall not be rejected solely because it was sworn before the filing of the suit concerned. In this case I do not see any compelling reason why I should direct that the supporting affidavit be rejected.

The preliminary objection is clearly not well-taken. It is hereby overruled with costs to the Defendant. It is so ordered.

DATED AT NAIROBI THIS 7TH DAY OF DECEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 7TH DAY OF DECEMBER, 2007