



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

**Civil Suit 192 of 2004**

**ARGAN WEKESA OKUMU.....PLAINTIFF**

**VERSUS**

**DIMA COLLEGE.....1<sup>ST</sup> DEFENDANT**

**MUNDIA GATERIA.....2<sup>ND</sup> DEFENDANT**

**NATION MEDIA GROUP LIMITED.....3<sup>RD</sup> DEFENDANT**

**RULING**

The plaintiff filed this suit by way of a plaint against the 3 defendant seeking:

- (a) General damages for defamatory statement
- (b) Costs of the suit
- (c) Interest both on (a) and (b) above
- (d) Any other or better relief this Honourable Court may deem fit.

The plaintiff was dated 27<sup>th</sup> February 2004 and filed the same date. It was accompanied by verifying affidavit dated 20<sup>th</sup> February 2004 but filed together with the plaint on 27<sup>th</sup> February 2004.

Mr. Obura, counsel for the 3<sup>rd</sup> defendant raised a preliminary objection suit on the ground that it is incurably defective and bad in law. He submitted that the suit is incurably defective in that the plaint is not accompanied by verifying affidavit in contravention of Order VII Rule 2 which provides:-

***“VII (2). The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in the plaint.”***

The plaint is accompanied by a verifying affidavit sworn by the plaintiff in compliance with Order VII Rule 1(e) and Rule 2 and filed the same date with the plaint. The only quarrel by counsel is that the plaint is dated 27<sup>th</sup> February 2004 while the verifying affidavit is dated 20<sup>th</sup> February 2004. Counsel submitted that at the point the alleged affidavit was sworn the plaint had not been drawn.

Mr. Nyakundi counsel for the plaintiff in opposing the Preliminary Objection submitted that the plaint is not defective as the same was properly filed accompanied with verifying affidavit but he conceded that there is a disparity in dating but both were filed at the same time.

Order VII Rule 2 of the Civil Procedure Rules is very clear that the plaint to be accompanied with

affidavit verifying the correctness of the averments contained in the plaint. The plaintiff's plaint was accompanied with a verifying affidavit at the time the same was filed. I see no defect. The defendant's Preliminary Objection has not merit and the same is therefore dismissed with costs.

Dated and delivered at Nairobi this 21<sup>st</sup> day of February 2006.

**J.L.A. OSIEMO**

**JUDGE**