



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CIVIL SUIT NO. 16 OF 2006**

**WAKF COMMISSIONERS OF KENYA ..... PLAINTIFFS**

**VERSUS**

1. **MAALIM OMAR**
2. **ADAN JUMAA**
3. **KHALIL A. KHALIL**
4. **FARID ALI**
5. **ABUBAKAR ALI**
6. **MOHAMED ISLAM .....**

.....**DEFENDANTS**

**R U L I N G**

By an undated Summons, the plaintiff herein, Wakf Commissioners of Kenya, sought for a temporary order of injunction to restrain the defendants from interfering, intermeddling in the affairs of the Wakf Commissioners bestowing work or taking over work, functions and duties of the Commissioners or duly appointed persons or otherwise dealing with all that property comprised in the land and Mosque Masjid K.M. Reques on Plot No. 434 Section III Mombasa Island or in any way soliciting or seeking for funds in Mombasa or without jurisdiction under the aegis of Masjid K.M. Reques pending the hearing and determination of this suit. The application is expressed to have been filed pursuant to the provisions of order XXXIX rules 1,2 and 9 of the Civil Procedure rules, Section 3 and 3 A of the Civil Procedure Act and Section 7 of the Wakf Commissioners Act, Cap 109 Laws of Kenya.

When the summons came up for interpartes hearing this court drew to the attention of Mr. Akanga advocate for the plaintiff/applicant the fact that the summons had no date though the same was duly signed. The learned advocate conceded but orally applied to this court under order VI rule 2 to permit him to fix a date on the summons. That oral application was vehemently resisted by Mr. Asige advocate for the Respondents. Mr. Akanga urged this court to exercise its inherent power and allow him to cure the defect because mistake of counsel should not be visited upon the litigant.

It was the view of Mr. Asige that the defect made the summons incurably defective and that the law does not allow this court to grant such a prayer.

I have considered the two rivaling positions expressed by the submissions of both learned counsels. It is not disputed that the summons is not dated. The questions which must be determined is what happens if a pleading is not dated as required by order VI rule 2(1) and (2) of the Civil Procedure rules?

The provisions of order VI rule 2(1) and (2) reads as follows:

*“2(1) Every pleading shall be divided into paragraphs numbered consecutively, each allegation being so far as appropriate contained in a separate paragraph.*

*(2) Dates, sums and other numbers shall be expressed in figures and not in words.”*

It is therefore clear that the law requires that a pleading must be dated. Before delving deeper into the issue, it is important to determine the issue as to whether a chamber summons can qualify to be referred to as a pleading. A ‘pleading’ is defined in Section 2 of the Civil Procedure Act to include a petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant. A summons therefore is a pleading in its own right. Let me refer to Halsbury’s Laws of England 4<sup>th</sup> Edition Vol. 36 page 7 under the heading

#### CONTENTS OF PLEADINGS.

##### (i) Formal Requirements

Under the sub-heading ‘marking and arrangement

of pleadings” it is stated inter alia:

*“Every pleading in an action must bear on its face*

*(1) the year in which the writ in the action was issued and the letter and number of the action*

*(2) The heading “In the High Court”*

*(3) .....*

*(4) .....*

*(5) On a statement of claim, the date on which the writ was issued.*

*(6) Title of the action*

*(7) The date on which the pleading was served and an endorsement of the party’s name and address or that of his solicitor”*

It is expressly clear from the above passage that the pleading

must have a date. I hold the view that a pleading which does not conform with any of the formal requirements prescribed or inferred by the rules is irregular. I will adopt by analogy the position taken by the Court of Appeal when faced with an objection against an unsigned plaint in the case of **Atulkumar Maganlal Shah =vs= Investments & Mortgage Bank Ltd. & 2 others C.A. No. 13 of 2001** where it said:

*“A party who files an unsigned plaint runs a very grave risk of having that plaint struck out as not complying with the law.”*

It should be noted that the signing of a pleading is one of the formal requirements just like the dating of

the same.

The upshot of the matter is that the undated summons filed in court on 31.1.2006 is ordered struck out. To be fair to the parties I shall not award any party costs. My order on costs is on the basis that the defect was pointed out by this court on its own motion.

**Dated and delivered this 17<sup>th</sup> day of February 2006.**

**J.K. SERGON**

**J U D G E**

In the presence of Mr. Asige for the Defendant and No appearance for Akanga for the Applicant