

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Case 374 of 1998

NDANU MUSYIMI NZOMOPLAINTIFF

VERSUS

MUVEE KASIA.....DEFENDANT

RULING

This matter was coming up for the hearing of the suit on 23rd May, 2006. When the case was called out for hearing, only Mr. Kilonzo for the defendant was present. Mrs Nzei, advocate for the plaintiff was absent.

Mrs Nzei had however sent Mr. Musyoka to hold her brief. Mr. Musyoka indicated that he was ready to proceed with the hearing of the suit. However Mr. Kilonzo stood up and informed the court that he had filed a Notice of Preliminary Objection and was ready to proceed with it. Mr. Musyoka promptly asked the court to place the file aside indicating that Mrs Nzei was on her way. One hour later, Mr.Musyoka urged the court to put off the matter since Mrs Nzei had gone to Makueni for an urgent application a matter I did not entertain as it was in breach of court practise and protocol.

Mr. Kilonzo promptly argued his Preliminary objection. It is on record as dated 24th April, 2006 and filed on 26th April, 2006. It was raising two preliminary points. What Mr. Kilonzo did not inform the court is whether or not he had served the Preliminary Objection on the plaintiff's advocate.

Having had a chance to peruse the suit file, I find that the Preliminary Objection had not been served upon the plaintiff's advocate. It was filed four months after the defendants advocate was served with the hearing notice for 23rd. The return of that service is on the file. There is however no return of service for the Notice of Preliminary Objection by the defendant on the plaintiff's advocate. I find it was irregular for the defendants advocate to have argued the said notice before serving the plaintiff's advocate. In the circumstances, the proceedings of 23rd May, 2006 are hereby set aside.

It is ordered that the Notice of Preliminary Objection be served on the plaintiff's advocate and argued afresh.

The costs of 23rd May, 2006 will be shared between the two parties.

Dated at Machakos this 31st day of May, 2006.

J. Lesiit

JUDGE

Read, signed and delivered in open court

In the present of :- Mrs Nzei for plaintiff

Mr. Kilonzo for defendant

Mueni – CC

J.Lesiit

JUDGE