



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 527 of 1998

PAUL GATHONGO RICHU

PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL

DEFENDANT

RULING

When this suit came up for hearing on 6.6.2006, Counsel for the defendant raised a Preliminary Objection on two grounds that a further amended plaint filed on 25.5.2006 offends mandatory provisions of the law and that the City Council of Nairobi ought to be served with summons to enter appearance and file defence.

In his oral submission in court in support of the Preliminary Objection, Counsel for the defendant argued that the further amended plaint introduced another party to this suit who should have been served with Summons to Enter Appearance. According to Counsel, Nairobi City Council is not the same as the City Council of Nairobi who are the new defendants. The foundation for that argument was that under Section 2 of the Local Government Act the City Council of Nairobi is a body corporate while the name Nairobi City Council is unknown. The plaintiff having further amended his plaint and having changed the description of the defendant from Nairobi City Council to the City Council of Nairobi, ought to have served the new defendant with Summons to Enter Appearance as provided under Order 1 Rule 10 (4) of the Civil Procedure Rules.

Counsel for the defendant further argued that there has been no compliance with Order 6A Rule 7 of the Civil Procedure Rules by the plaintiff as the further amended plaint does not state the order that allowed the amendment.

Reliance was placed upon the case of **Nairobi City Council vs. Cris Evarard & others: HCCC No.851 of 2002** – in which Mwera, J. held that Nairobi City Council was unknown in law and a suit filed by such an unknown body was incompetent. The Learned Judge struck out the plaint. My brother Kihara Kariuki, J. agreed with Mwera, J. in the case of **Daniel Kamau Nyingi & 3 Others vs. Nairobi City Council: HCCC No.2255 of 1994.**

Responding to the Preliminary Objection, Counsel for the plaintiff submitted that the order to further amend the plaint was recorded by consent and the only amendment the plaintiff made was to properly describe the defendant. In Counsel's view the defendant's own documents describe it as Nairobi City Council and it would be unjust for the defendant to escape liability merely because it is known in law as the City Council of Nairobi when it has dealt with the plaintiff variously as Nairobi City Council and the

City Council of Nairobi.

With respect to the second ground of objection, Counsel for the plaintiff submitted that the same is prohibited by Order 50 Rule 12. Counsel further submitted that the defendant was clutching at technicalities and substantial justice demanded that the Preliminary Objection be overruled.

I have considered the rival arguments by Counsel. In my view the objection has not been well taken. The original plaint filed on 26.6.1998 and the amended plaint filed on 2.9.1998 described the defendant as Nairobi City Council being a local authority established as such pursuant to the Local Government Act Cap.280? Laws of Kenya. The defendant's response to the description was admission save for its address which was care of its advocates.

In the further amended plaint filed on 25.5.2006, the defendant is described as the City Council of Nairobi, a local authority established as such pursuant to the Local Government Act Cap.280? Laws of Kenya. This description is also admitted by the defendant in its amended defence filed on 29.5.2006.

On 10.12.1998 a Statement of Agreed Issues was filed. At that time the defendant was described as Nairobi City Council. The capacity of Nairobi City Council being sued as described was not framed as an issue for the determination of the court.

On 23.7.2003, the plaintiff filed his list and bundle of documents. The list includes a letter of allotment headed "Nairobi City Council" addressed to the plaintiff. There is also a Beacon Certificate with the same heading and so is a document headed "Inspection Sheet." Lastly there is a receipt dated 23.12.1997 also headed "Nairobi City Council." In the plaintiff's supplementary list of documents filed on 6.6.2006, there is a document dated 22.8.2000 addressed to the plaintiff. This document is on a letter head of "Nairobi City Council."

It is clear therefore that the defendant variously describes itself as Nairobi City Council and the City Council of Nairobi. It would also appear that the defendant has dealt with the plaintiff variously as Nairobi City Council and the City Council of Nairobi and I believe that is the reason the description of the defendant as either Nairobi City Council or the City Council of Nairobi has been admitted by the defendant in its pleadings.

It is for the above reasons that I feel the Preliminary Objection has not been well taken. In my view it would offend against our sense of justice and fair play for a party to escape liability for a civil wrong or a civil claim merely because the same party has variously described itself differently. To hold otherwise, would lead to absurd results. For instance, the defendant would enter into heavy financial transactions with third parties in the name of Nairobi City Council derive benefit therefrom and when asked to meet its part of the bargain, deny liability on the ground that its name under the Local Government Act Cap.265 is the "City Council of Nairobi." Surely a competent court of law would not countenance that result. I must therefore most regrettably and unfortunately disagree with the decisions of Mwera, J. and Kariuki, J. relied upon by the defendant.

With respect to the objection that the further amended plaint does not state the order that allowed the amendment, I would hold that the omission to cite the order allowing the amendment is not fatal to the validity of the further amended plaint. Such omission in my view is a mere irregularity which the court can ignore especially since in this case the order allowing the amendment was recorded by consent. No prejudice will be occasioned to the defendant.

In the end the Preliminary Objection raised by the defendant is overruled with costs to the plaintiff.

It is so ordered.

DATED and DELIVERED at NAIROBI this 22nd day of June 2006.

F. AZANGALALA

JUDGE

Read in the presence of:- Kimani for the plaintiff and Khalwale h/b for Mose for the defendant.

F. AZANGALALA

JUDGE

22/6/06