

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI COMMERCIAL COURTS)
Civil Case 188 of 2003

MANJIT SINGH SETHI1ST PLAINTIFF

PERMINDER SINGH SETHI.....2ND PLAINTIFF

VERSUS

SSAMSON KARIUKI NJENGI.....1ST DEFENDANT

SUSAM WAITHERERO NJENGI.....2ND DEFENDANT

R U L I N G

The Defendants herein sought by chamber summons dated 20th February, 2006 the main orders that the interlocutory judgment entered against them on 16th June, 2003 and all consequential orders be set aside and that they be granted leave to defend the suit. When the application came up for hearing on 6th March, 2006 learned counsel for the Plaintiff raised a preliminary objection to the application on a point of law. That point of law is that the Defendants' counsel, KELVIN MOGENI, having come onto the record without leave of the court duly sought and obtained under Order III, rule 9A of the Civil Procedure Rules, is not properly on record. The application has therefore been filed by a stranger in the proceedings and ought to be struck out.

The answer of the learned counsel for the Defendants is that there has not been any change of advocates in that RAMESH MANEK, Advocate entered appearance for the Defendants on 16th September, 2003 after the interlocutory judgment had been entered, and was thus not properly on record. It was also argued that failure of an advocate to properly come on record is not a ground to strike out an application but to stay it until such leave is granted.

I have considered the submissions of the learned counsels appearing. I have also perused the court record. Ramesh Manek, Advocate entered appearance for the Defendants on the very same day that interlocutory judgment was entered, the 16th September, 2003. So, it is not true to state that the appearance was entered after the interlocutory judgment was entered, unless specific times can be given when each event occurred. This was not done. Even if appearance had been entered after interlocutory judgment was entered it would not have made any difference with regard to the requirements of rule 9A of Order III because a defendant may appear at any time before final judgment. See rule 1 of Order IX. Ramesh Manek, Advocate therefore properly entered appearance for the Defendants and is properly on record for them. Kelvin Mogeni cannot properly come on record for the Defendants without leave of the court as required by rule 9A of Order III as judgment has already been passed.

I would have been inclined to stay the application at hand until the necessary leave is obtained by Kelvin Mogeni, Advocate. But no such indulgence was sought, learned counsel for the Defendants choosing instead to argue the preliminary objection raised. In the event therefore I must uphold the preliminary objection. Kelvin Mogeni, Advocate, not being properly on record, the application by chamber summons dated 20.2.2006 was filed by a stranger in the proceedings. The application is thus not

properly before the court. It is hereby struck out with costs to the Plaintiff. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF JUNE, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 2ND DAY OF JUNE, 2006.