



REPUBLIC OF KENYA

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

Civil Case 191 of 2004

KALPANA SHETH.....PLAINTIFF

VERSUS

LUCY MATHAI T/A SEDARE.....DEFENDANT

RULING

This Ruling is delivered in the Application dated 19th May 2006 brought under Order VI Rule 13(1) (d), of the Civil Procedure Rules, Section 9, 34 and 35 of the Advocates Act, seeking the striking out of a Memorandum of Appearance dated 15th March 2004 as well as subsequent pleadings and/or papers filed in this suit by Kennedy Getanda t/a K. Getanda and Company Advocates and for an order that the suit proceeds to formal proof.

Specifically, the applicant wants the court to strike out, in addition to the Memorandum of Appearance above state;

- (a) The Certificate of Urgency filed on 8th April 2004
- (b) The Chamber Summons filed under High Court Vacation Rules on 8th April 2004
- (c) The Chamber Summons filed under Order IXA Rule 10 and 11 on 8th April 2004.
- (d) The Supporting Affidavit of Lucy Mathai sworn and filed on 8th April 2004
- (e) The Grounds of Opposition filed on 22nd April 2005.
- (f) The Replying Affidavit of Lucy Mathai filed on 22nd April 2004
- (g) The Certificate of Urgency dated and filed 4th May 2004
- (h) The Chamber Summons application dated and filed on 4th May 2004

The main ground upon which this application is made is that all the above documents and or application were drawn signed and filed by the said Kennedy Getanda on behalf of the Defendant whilst he did not hold a valid Practising Certificate and was therefore an unqualified person under the provisions of the Advocates Act.

The applicants' contention as appearing in the application as well as in submissions by counsel is that the documents having been so drawn, signed and filed are an abuse of the process of court and ought to be struck off under Order VI Rule 13(1)(d) of the Civil Procedure Rules.

Section 9 of the Advocates Act provides in emphatic terms that

“subject to this Act, no person shall be qualified to practice as an advocate unless

- (a)
- (b)
- (c)
- (d) He has in force a practicing certificate.”

In relation to the acts complained herein the same are prohibited under Section 34(1) e and f which provides as follows:

“34. (1) No unqualified person shall either directly or indirectly take instructions to draw or prepare any document or instrument –

- (a)
- (b)
- (c)
- (d)
- (e) ***for which a fee is prescribed by any order made by the Chief Justice under Section 44; or***
- (f) ***relating to any other legal proceedings.***

The drawing and or preparing the documents complained of herein on behalf of the Defendant clearly falls under the matters for which a fee is prescribed by the Chief Justice Under S. 44 and clearly relate to legal proceedings.

According to the depositions by the applicant in her Supporting Affidavit of 19th May 2004, which depositions are supported by the annexed correspondence from the Law Society of Kenya. Mr Getanda did not hold a practicing Certificate between the period 1st January 2004 to 23rd April 2004. As is evident from the annexure marked KSS 1(b) the last practicing Certificate taken by the said Mr. Gatanda prior to the once taken on 23rd April 2004 was for the previous year. Mr. Getanda did not attend the hearing of the present application despite having filed a Replying Affidavit thereto. In it he claimed to have been a holder of a valid certificate during the period complained of despite the fact that the certificate for the year 2004 exhibited by him in his bundle of annexures is dated 28th April 2004. He contends that the said certificate covered the whole year 2004. I am not persuaded that that is the position in view of the clear wording of the prohibitive sections referred to above. I have been referred to the authority of BELCO HOLDINGS LIMITED VERSUS AKBER ABDULLAH KASSAM ISMAIL H.C.C.C NO. 244 of 2004 in which similar objections were raised against similar acts of Mr. Getanda and where the court held in favour of the applicant and struck out the pleadings and/or documents filed by Mr. Getanda between 1st February 2004 and 28th April 2004 on the same grounds. I have carefully considered the present application in light of the finding by my learned brother Justice Lenaola and although his Ruling is not binding upon me, I find the same heavily persuasive. I have no reason to depart from the said Ruling and on the strength of the same I hereby find that the application herein is

well founded and must succeed. Consequently I allow the same in terms of prayer 2 with no order as to costs. I make no finding as to prayer 3 since counsel never submitted as to why the order sought therein should be granted. Applicant may make an appropriate application in regard thereto.

Dated and delivered at Nairobi this 14th day of July 2006

M. G. MUGO

JUDGE

Delivered in the presence of

No appearance for the Applicant

No appearance for the Respondent