

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

Civil Case 1114 of 2005

JACQUILINE MUGANA.....PLAINTIFF

VERSUS

DOREEN TERAH.....DEFENDANT

RULING

This Ruling is delivered in the Defendant's Notice of Preliminary Objection dated 4th October 2005 challenging the Plaintiffs suit and the Chamber Summons dated 12th September 2005 on the grounds that the Plaintiff does not aver to the fact that no other suit is pending or that there have been no other proceedings between the Plaintiff and the Defendant on the subject matter as required under the Rules of pleading. Another preliminary point raised is that summons to enter appearance are yet to be served.

At the hearing of the Preliminary Objection Counsel for the applicant submitted that the non inclusion of the averment as to the non-existence of another suit was erroneously left out in an earlier draft of the Plaint which error was noted at the date of filing. Despite amending the Plaint and filing an appropriate copy in court counsel said that he served the non-amended draft to the Defendant. He begged the court to find in favour of his submissions and over rule the objection on the basis of the Plaint appearing on the record.

The court has had occasion to peruse the filed Plaint and does note that indeed it does contain the averment as paragraph 11. The copy served on the Defendant has also been shown to the court and the same appears not to have the said paragraph. I have no good ground to sustain the Defence Counsel's submission that the amendment may have been done by devious means since the copy of the Plaint on record does show a court stamp evidencing filing on 12th September 2005, the same day the one served on the Defendant was filed. I therefore do not consider the objection strong enough to cause me to find the suit and the related application incompetent on that ground. Whilst I find the Preliminary Objection fails I find myself compelled to award the costs of the same to the Defendant which I assess at shs 5000/= . I further order that the same be paid before a date is taken for the hearing of the Plaintiff's application of 12th September 2005. The Plaintiff must also, within the next 3 days, serve the Defendant with the filed copy of the Plaint as well as summons to enter appearance. In default the suit and application shall stand dismissed.

Dated and delivered at Nairobi this 7th day of July 2006

M.G. MUGO

JUDGE

Delivered in the presence of

No appearance for the Applicant

No appearance for the Respondent