



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

Civil Case 1362 of 2004

**J.B. MACHIRA T/A MACHIRA & CO ADVOCATES.....
....PLAINTIFF**

VERSUS

**GITOBO IMANYARA T/A GITOBU IMANYARA & CO
ADVOCATES.....DEFENDANT**

RULING

By way of a plaint dated 14th December 2005 and amended on 31st January 2005 the plaintiff brought this claim against the defendant seeking damages for defamation.

The defendant on being served with summons filed a defence denying the claim in total.

On 13TH December 2005 the plaintiff brought this Chamber Summons under Order VI Rule 13 (1) (b) (c) and (d) of the Civil Procedure Rules seeking orders that the Defendant's defence filed herein be struck out and the plaintiff's suit to proceed for assessment of damages.

On 24th February 2006 he also filed an affidavit sworn by Mr. Gitobu Imanyara presumably a replying affidavit to the same Chamber Summons

The plaintiff raised a Preliminary Objection on a point of law in that under the provisions of Order L Rule 16 one cannot file both the grounds of Opposition as well. By filing both documents the defendant contravened the provisions of Order L Rule 16 of the Civil Procedure Rules which provides as follows:

“O.50 r 16

(1) Any respondent who wishes to oppose any motion or other application shall file and serve on the applicant a replying affidavit or a statement of grounds of opposition if any, not less than three clear days before the date of hearing.”

Mr. Machira in conclusion urged the court to expunge the defendant's later document which is the replying affidavit. But according to Mr. Orengo counsel for the defendant, the provisions of Order 50 Rule 16 (1) do not prohibit a party from filing both the grounds of opposition and a replying affidavit as the two documents have different objectives and therefore one cannot substitute the other.

With due respect to counsel the provisions of Order 50 Rule 16 (1) of the Civil Procedure Rules are very clear and do not call for any other interpretation other than the clear meaning of the words as contained therein. One can either file grounds of opposition or a replying affidavit but not both.

For the above reasons the plaintiff Preliminary Objection raised herein is upheld and consequently the defendant's later document that is the replying affidavit filed herein on 27th February 2006 is expunged from the record.

Dated and delivered at Nairobi this 19th day of October 2006.

J.L.A. OSIEMO

JUDGE