



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 1043 OF 1997**

**MATINYANI WOMEN DEVELOPMENT GROUP.....PLAINTIFF**

**VERSUS**

**GROUP FOUR SECURITY LIMITED.....DEFENDANT**

**RULING**

The plaintiff **MATINYANI WOMEN DEVELOPMENT GROUP** filed this suit against the defendant by way of a plaint on 31st October 1996.

For one reason or another it has not been heard. On 21st February 2001 it came up for hearing and evidence was taken from 3 witnesses. When Mr. Wachira counsel for the plaintiff wanted PW3 DAVID GITHINJI to produce a valuation report, Mr. Oluoch counsel for the defendant objected to it and demanded that the maker of the said valuation report be called to produce it. Counsel for the plaintiff asked for adjournment to enable him to trace the maker of the said report and the hearing was adjourned. When the matter came up for hearing on 11th April 2005 both parties had changed advocates.

The plaintiff was being represented by Miss Mulwa while Mr. Nyaribo appeared for the defendant. Before the hearing started Miss Mulwa applied for leave to amend the plaint to include the names of the chairperson and the Secretary of the plaintiff in order for the plaintiff to have the legal capacity to sue Mr. Nyaribo objected to the oral application to amend the plaint and submitted that the plaintiff was reacting to his application he filed on 22nd July 2004 stating that the suit was bad in law. He applied to have his application heard first. He submitted that although the suit was filed in 1997 the idea to amend the plaint at this late state was an afterthought and after the plaintiff had been served with a Notice of Preliminary Objection seeking orders to strike out the suit. Mr. Nyaribo was allowed to argue his preliminary objection.

He submitted that the plaintiff's suit is a non-starter and cannot be sustained as the plaintiff is not an entity which in law has a capacity to sue or be sued. The plaintiff is a Social Welfare Group and therefore it cannot maintain a suit in its own name. The suit ought to have been brought through the office bearers of the plaintiff.

Secondly as the plaintiff is not registered under the Business Names Act, it cannot maintain a suit in its own name (Section 11).

Miss Mulwa in opposing the application submitted that the plaintiff is a Social Welfare Group registered under the Ministry of Culture and Social Services but she conceded that the names of the office bearers were inadvertently left out but submitted further that failure to join the office bearers in the suit did not make the suit fatally defective. She further submitted that the plaintiff having called witnesses to testify, the defendant should not be allowed to raise a preliminary objection at this late stage.

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which if urged as a preliminary point may dispose off the suit. A preliminary objection raises a pure point of law which is argued on the assumption that the facts pleaded by the other side are correct. It is conceded by the plaintiff's counsel that the plaintiff has no legal existence and that it ought to have sued through its office bearers but were inadvertently left out. A non-existent person cannot sue and the court having been made aware that the plaintiff is nonexistent and therefore incapable of maintaining the action, it cannot allow the action to proceed.

Since a non-existent, plaintiff can neither pay nor receive costs, there can be no order as to costs.

Action struck out. No order as to costs.

Dated and delivered at Nairobi this 19th April 2005.

**J.L.A. OSIEMO**

**JUDGE**