



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Suit 155 of 2005 (1)

SHIRIKA LA KUSAIDIA WATOTO

WA KENYA Alias FAIDA KENYA..... 1ST PLAINTIFF

NAOMI WANJIRU WAMBU2ND PLAINTIFF

BEN GATHONGO 3RD PLAINTIFF

VERSUS

RODA ROP 1ST DEFENDANT

ALEX JUMA 2ND DEFENDANT

RULING

The plaintiffs purported to file an application dated 3rd June, 2005 by way of a chamber summons seeking injunctive orders to restrain the defendants from interfering with the management of the affairs of the first plaintiff pending the hearing and determination of a suit which they had filed against the defendant.

The application showed that it was drawn and filed by the third plaintiff who also drew and filed the affidavit in support of the said application. The plaint itself was also drawn and filed by the third plaintiff as well as a verifying affidavit.

The defendants, through Kipkosgei Arap Bungei & Co. Advocates filed a Notice of Preliminary objection. The same was argued on 29/6/2005 by which time the plaintiffs had appointed Motanya & Co. Advocates to represent them.

The grounds of preliminary objection were as follows:

- 1. That the second and third plaintiffs had no locus Standi and their names should be struck out with costs.***
- 2. That the applicants' application is incompetent and improperly before court and should be struck out.***
- 3. That the plaintiffs' application is fatally and incurably defective.***
- 4. That the second and the third plaintiffs' suit reveals no Cause of action, reasonable or otherwise vis a vis the defendants.***

5. That the suit is totally defective for non-compliance With mandatory provisions of law and/or procedure.

6. That the suit is otherwise misconceived and/or an abuse of the process of the court.

In support of the first ground, Mr. Bungei submitted that as per Section 12(3) of Non Governmental Organizations Coordination

Act, the first plaintiff was a body corporate with capacity to sue and to be sued in its own name and therefore the second and the third plaintiffs as officials of the first plaintiff had no capacity to join this suit as plaintiffs. He further submitted that the third plaintiff had also filed HCCC NO.200 of 2003 at Nakuru where he had sued some other two defendants and the same objection was raised and was upheld with the result that the entire suit therein was struck out.

On the second ground of preliminary objection, Mr. Bungei submitted that the chamber summons, having been drawn and filed by the third plaintiff who had no locus standi, the same was incompetent.

There was an amended plaint that was drawn and filed by M/s Motanya & Company Advocates but the second and third plaintiffs were still shown as plaintiffs and the amended plaint was also not signed. The first plaint had been signed by the second and third plaintiffs and was therefore null and void ab initio and there was no plaint capable of any amendments, counsel submitted. The court was therefore urged to strike out the suit.

Mr. Onyango for the plaintiffs submitted that all the plaintiffs had locus and were competent to initiate the suit. He further submitted that bringing the second and the third plaintiff into the suit did not invalidate the suit and said that pleadings had not been closed and so the plaint could still be amended further.

Mr. Onyango further stated that the verifying affidavit sworn by the third plaintiff in the original plaint verified the facts contained in the plaint and if for any reason the affidavit was found to be wanting, the court could still exercise its discretion to order another verifying affidavit to be filed. He cited **MICROSOFT CORPORATION VS MITSUMI COMPUTER GARAGE LTD. [2001] E.A. 260** in support of his above submission.

I have carefully considered all the submissions that were made by counsel in this matter.

According to the original plaint as well as the amended plaint, the first plaintiff is described as a Non Governmental organization registered under Non Governmental organization Co-ordination Act 1990. Section 12(3) of the said Act states as follows:

“A registered Non Governmental Organization shall by virtue of such registration be a body corporate capable in its name of;

(a) Suing and being sued”

(b) e.t.c.

The above provision of the law has not been challenged by the plaintiffs.

In light of the said provisions of the law, only the first plaintiff should have filed this suit. The second and the third plaintiffs had no capacity in joining themselves as plaintiffs in this suit irrespective of whatever position they held in the first plaintiff organization unless they had their own justiciable claims against the defendants as well. The third plaintiff did not sign the verifying affidavit that accompanied the original plaint as a person duly authorised by the first plaintiff to sign the same for and on its behalf but he signed in his capacity as a plaintiff. Since the second and the third plaintiffs had no locus standi to institute the suit, a stranger could not validly swear a verifying affidavit. I therefore uphold the first preliminary

objection.

For the same reasons as above I also uphold the second, third and fourth preliminary objections.

In view of my above findings, I do not even need to consider the other grounds because I am convinced that the entire suit is fatally defective and cannot stand. I strike it out with costs to the defendants.

DATED, SIGNED & DELIVERED at Nakuru this 27th day of July, 2005.

D. MUSINGA

JUDGE

27/7/2005