

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1878 of 2000

NAGAWA HANNAH LULEPLAINTIFF

VERSUS

ADILA MALIK.....DEFENDANT

RULING

The plaintiff by way of this Chamber Summons dated applies for leave to file a supplementary verifying affidavit to the plaint filed herein on 15th November 2000. The application is based on the grounds that at the time of filing suit, the plaintiff was gravely ill and in no condition whatsoever to sign the verifying affidavit accompanying the plaint, that the plaintiff is now able to write and has indeed prepared the verifying affidavit, that it is in the interest of justice that the plaintiff be granted leave to file the supplementary verifying affidavit and that the defendant will not be prejudiced in any way by this application.

The application is opposed by the defendant on the ground that the plaintiff's application is bad in law and incurably defective, that the applicants application is an abuse of the due process of the court and that the applicant has not come to court with clean hands in that the applicant has failed to disclose to court that she could be able to thumb print and has also not disclosed the contents of the initial medical report.

Mrs. Ameka for the applicant submitted that the plaintiff was a victim of a road accident which left her paralyzed from the neck downwards and she was forced to swear the verifying affidavit pursuant to the facts and instructions given to her by the plaintiff in accordance to practice notes and pursuant to Order VII Rule 1 which requires that a plaint must be accompanied by a verifying affidavit sworn by the plaintiff.

The practice note came into operation in the year 2000 while the plaintiff was out of the country for treatment. She further submitted that in the event the said affidavit is found to be irregular that the defect is excusable and can be cured.

Mr. Opondo for the defendant in opposition to the application submitted that the plaintiff could have thumb-printed the verifying affidavit. He further submitted that the medical report on record

dated 29th November 2001 indicates that the plaintiff had recovered sufficiently and was able to do certain activities such as washing her face, feeding herself and cleaning her teeth and he urged the court to dismiss the plaintiff's application.

The plaintiff was involved in a road accident on or about the 26th day of August 1998. She sustained serious injuries namely cervical spinal injury involving:

- (i) Saggital fracture body C4
- (ii) Burst fracture body C5 with left posterior C5 laminar fracture and C4 motor and sensory complete tetraplegia. She was initially admitted into Nairobi Hospital but due to the seriousness of the injuries she was transferred to the Paddocks Private Hospital in the UK for further management.

When this suit was filed she was still nursing her injuries. She has now recovered sufficiently and she is able to sign the verifying affidavit and she has applied to this court for leave to be allowed to file a supplementary verifying affidavit, having been rendered substantially invalid for a long while and therefore unable to write, let alone sign the verifying affidavit.

After I have considered the application and the submission by both counsels for the applicant and the respondent, it cannot be said that the applicant's application lacks in merits. I allow the application and grant leave to the plaintiff to file a supplementary verifying affidavit to the plaint.

Costs be costs in the suit.

Dated and delivered at Nairobi this 28th day of September 2005.

J.L.A. OSIEMO

JUDGE