



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

Civil Case 2570 of 1998

CHARLES NYWESA OMAIPLAINTIFF

VERSUS

KENYA POSTS AND TELECOMMUNICATIONS

CORPORATION DEFENDANT

RULING

1. The plaintiff in this suit raises a Preliminary objection against the defendant herein being on record.
2. The grounds of such objection being that the parties had conceded that the former defendant M/s Kenya Post and Telecommunication be substituted (16.4.05 (Ransely J). Leave to file an amended plaint within 14 days was then given to reflect the substituted defendants being M/s Telkom Kenya Ltd.
3. The advocate for the defendant failed to make amendments to the plaint as required under order 1 r 10 (4) Civil Procedure Rules by seeking the direction, namely it reads:-

“Where a defendant is added or substituted, the plaint shall unless the court otherwise directs, be amended in such manner as maybe necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit on the original defendant.”
4. The plaintiff advocates now seeks that the notice of apportionment for Telkon and the affidavit be expurged from the records. The only pleading on record should be the plaint.
5. In reply the advocates for the defendant advocates states once the order is made it took effect immediately and as such the defendant is substituted. The only thing that remains is the plaint to be amended

II: Order 1 r 10 Civil procedure Rules

6. My understanding of order 1 r 10 Civil Procedure Rules is that it deals with the issue of the actual parties to a suit where a wrong plaintiff has been sued or the plaintiffs or defendant names can be substituted if it is wrong. This is in order to effectively and completely allow an adjudication on the matters in question to be settled and determine that is involved in a suit.
7. Sub rule 4 (supra) states where there is leave to substitute a defendant the plaint shall be amended unless the court otherwise directs.

8. It seems that the defendant proceeded immediately to file a notice of appointment of advocates and a replying affidavit to the file instead of waiting for the directions sort by the plaintiff.

9. I would agree and hold that the notice of appointment and replying affidavit for the proposed new defendant was filed prematurely and the same be and is hereby struck out with costs to the plaintiffs.

10. Directions under order 1 r 10 (4) Civil Procedure Rules should be taken up first to enable the correct defendants come on record.

Dated this 27th day of September 2005 at Nairobi.

FRED A. OCHIENG

JUDGE

K.A. Nyachoti & Co. Advocates for the plaintiff

Ibrahim Isaack & Co. Advocates for the defendant