



**REPUBLIC OF KENYA**

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

**Civil Case 812 of 2005**

**IBNUL HASSAN RIZVI.....PLAINTIFF/APPLICANT**

**VERSUS**

**DINESHCHANDRA GORDHANSASS**

**BHATESSA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**KENYA COMMERCIAL BANK LTD.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The plaintiff filed this suit by way of a plaint against the defendants jointly and severally seeking:-

- (a) An injunction to restrain the defendants by themselves, their servants, agents or otherwise howsoever from selling transferring, mortgaging or otherwise dealing with all that property known as **LR NO. 300/593**.
- (b) A declaration that the plaintiff is the owner of all the property known as **LR NO.330/593**.
- (c) Costs of the suit.

The plaint was signed by S.O. Owino & Associates who is the counsel on record for the plaintiff on 30<sup>th</sup> June 2005.

The defendant on being served with the summons filed a Notice of Preliminary Objection notifying the plaintiff that the 2<sup>nd</sup> defendant shall raise the following preliminary objection:

- (1) The plaint and subsequent pleadings should be struck out with costs as the plaintiff's advocate

does not hold a current Practicing Certificate for the year 2005.

(2) The pleadings filed herein are fatally incompetent and must be struck out.

Mr. Gichuhi for the defendant submitted that the plaint was filed by a firm of S. Owino who did not have a current Practicing Certificate at the time and urged the court to strike out the plaint. He referred the court to the case of **OBURA VS. KOOME [2000] LLR 4143 (CAK)** in which the Court of appeal struck out the Memorandum of Appeal for being incompetent having been signed by an advocate who did not have a current Practicing Certificate.

Counsel for the plaintiff, Mr. Owino appeared in person to oppose the Preliminary Objection. But at this time he displaced a Practicing Certificate which he obtained on 20<sup>th</sup> July 2005. He submitted that a Preliminary Objection does not lie in law and that he was not accorded an opportunity to file a replying affidavit to counter the list of advocates who hold current Practicing Certificate in which his name is omitted.

The Preliminary Objection is founded on the ground that the suit is incompetent having been filed by an unqualified person. Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

Section 9 of the Advocates Act (Cap 16) provides:

Subject to this Act no person shall be qualified to act as an advocate unless

- (a) He has been admitted as an advocate and
- (b) His name is for the time being on the roll and
- (c) He has in force a Practicing Certificate.

Although Mr. S.O. Owino who is the advocate on record for the plaintiff has a Practicing Certificate dated 20<sup>th</sup> July 2005, it is not in dispute that at the time he filed this suit 30<sup>th</sup> June 2005 he did not hold a Practicing Certificate in breach of Section 9 subsection © of the Advocates Act.

In these circumstances the plaint is incompetent having been signed by an advocate who was not entitled to appear in court.

Accordingly the suit is struck out with costs to the defendant.

Dated this 21<sup>st</sup> day of September 2005.

**J.L.A. OSIEMO**

**JUDGE**