



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC CIVIL APPLICATION 1221 OF 2003

WYCLIFFE SINGANI ANALO APPLICANT

VERSUS

BERNARD MUSYOKI & ANOTHER RESPONDENT

RULING

By an application brought by way of a Notice of Motion dated 24th September, 2003 the applicants seeks leave to sue as a pauper (in forma pauperis.) The application is supported by an affidavit sworn by the applicant on 24th September, 2003. In support of the application is a statement of pauperism and a copy of a further amended plaint in HCCC 2115 of 2001. He claims to have obtained leave to file the Further Amended Plaint.

The respondents are represented by the firm of Okoth & Kiplagat and by an affidavit sworn by Oriema Okoth on 23rd January 2004 the application is opposed.

The main ground is that the applicant having filed suit in HCC 2115 of 2001 and having paid the initial fees he cannot be a pauper and the application is an after thought. The applicant has also been obstructive in out of court settlement aimed at ending the matter amicably and therefore the application has been brought in bad faith and it is intended to delay the speedy determination of the matter. It is contended on behalf of the respondents that Order 32 does not contemplate a pauper after the filing of the suit but before the filing of the suit.

The respondents further contend in a suit already commenced by plaint, there cannot be a competent application for leave to sue as a pauper because there is already a suit. The learned counsel Mr Maingi pointed out that the application to sue as a pauper is an informal one and the papers used finally constitute the plaint when leave is granted. He does not ask for costs in respect of this application.

Effendi for the applicant (and who was initially reluctant to come on record understandably because of the provisions of O 32 do not allow request but this court requested her to assist because the applicant was unable to express himself) says that the firm of Field Marshall paid the initial fees of Kshs 3000/- and they are taking the brief on pro bono basis.

Following the amendments additional fees of Kshs 61,905/- is payable and the applicant cannot afford. The additional fees comes from the claim for special damages shooting up to Kshs 1226,950. The applicant lost his arm in the course of his employment. He was previously earning Kshs 4327 per month and is currently depending on handouts from well wishers. Field Marshall are not now in a position to pay the additional fees. In the circumstances she argued that the applicant is a pauper.

She relied on the Tanzania authority of **ALI SULEMAN MANDEVIA RUNGINE AFRICAN COPERATIVE UNION LTD** (1958) EA 524. The authority establishes the principle that permission to sue as a pauper is a statutory right. This authority does confirm that the application to sue as pauper must precede the institution of suit. The authority does not assist the applicant. The court has considered submissions made on behalf of the applicant. The court excuses the representation of the applicant in view of the clear promises of Order 32 on representation. No representation by advocate is allowed.

Turning to the merits of the application the applicable Order 32 Rule 1 (2) defines “pauper” as follows:

“For the purposes of this Order a person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in the suit”

Under Rule 2 every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suit together with a statement that the pauper is unable to pay the fee prescribed in such suit and the same shall be signed in the manner prescribed for the signature of pleading.

Under Rule 3 the application for permission is required to be presented by the applicant in person.

If the application is in proper form there is a provision for the court to examine him on merits of the claim and the property he owns if any.

If an application is not framed or presented as required under Rules 2 and 3 above rule 5 which is worded in mandatory terms empowers the court to reject the application.

It is quite evident from the interpretation of Rules 1 to 5 of Order 32 of the Civil Procedure Rules the application before me falls outside its provisions.

(a) because there is already a suit in existence and the initial fees already paid by the applicant. Application for permission in the course of existing proceedings or suit is therefore misconceived

(b) formal applications are foreign to Order 32 – see Order 32 Rule 18 which provides:- “Applications under this Order shall be in writing addressed to the court.”

It is clear that pauperism after the institution of suit was not contemplated and not provided for under O 32 of the Civil Procedure Rules.

I therefore hold that the applicant is not a pauper as per the relevant rules and the application is dismissed with no order as to costs.

DATED and delivered at Nairobi this 19th day of March, 2004.

J G NYAMU

JUDGE

Editorial Note
Civil Procedure

- Pauper defined
- Applications are informal but in writing
- Application for leave to sue to be filed before filing suit
- No pauperism after suit filed and was not contemplated
- Application rejecte