

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 220 OF 2001

TIMOTHY ODWORI MAKHOKA.....PLAINTIFF

=V E R S U S=

1.RAMA LUGU.....1ST DEFENDANT

2.SULEIMAN MONI CHARO.....2ND DEFENDANT

R U L I N G

The Applicant filed his Complaint on June 2000. On 5/5/2000 the procedure rules had been altered and it became mandatory to always plead in a Complaint the matters now sought to be added. I am satisfied with the explanation given for noncompliance with the new rule. There is a difference between omitting to file a verifying affidavit and omitting to include material under Rule 7A(2) Civil Procedure Code.

Furthermore, there is now a divided opinion in the High Court as to whether non-compliance with the new procedure (7A) makes a Complaint null and invalid.

For my part I am of the view that rules of procedure should not be used to the prejudice of a litigant where a step can be taken to correct the error.

I have considered the submissions of both counsel and the authorities submitted. I am inclined to allow the application which I hereby do. I grant the orders sought with costs to the Defendant.

Dated at Mombasa this 12th day of February, 2004.

JOYCE KHAMINWA
J U D G E

I also order the Amended Complaint be filed within 10 days from to-day. Defence may be amended within 15 days of service of Amended Complaint.

JOYCE KHAMINWA
J U D G E