

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

CIVIL SUIT NO. 44 OF 1999

NANCY WANJIKU NG'ANGA PLAINTIFF

- VERSUS -

1. THE STANDARD LTD..... 1ST DEFENDANT

2. BETTING CONTROL & LICENSING BOARD2ND DEFENDANT

R U L I N G

I have considered the point raised by Mr. Gichana as regards the Notice of Preliminary objection which he says was served upon him just a day before the hearing as opposed to 3 clear days as provided for under order 50 rule 16 (1) which Provides as follows:

“16 (1) Any respondent who wishes to oppose any motion or other application shall file and serve on the applicant a replying affidavit or a statement of grounds of opposition if any, not less than three clear days before the date of hearing”

Underlining mine)

The Rule does not include Notice of Preliminary objection. However order 47 rule 2 does provide for the mode of service of Notices and in my humble interpretation a Notice of Preliminary objection which is not separately provided for would fall under this rule. Order 47 rule 2 provides: “2. All orders notices and documents required by these Rules to be given to or served on any person shall save where other provision is made, be served in the manner provided for the service of Summons” The rule does not set a time limit as to how many days prior to the hearing the documents falling under this rule are to be served. And with this in mind, I find no reason to uphold the objection raised by Mr. Gichana and the same is hereby dismissed.

Dated and Delivered at Mombasa this 14th day of February, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE