

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO 1125 OF 2002

KENYA COMMERCIAL BANK LTD PLAINTIFF

VERSUS

SAMUEL GITAU KIMANI DEFENDANT

RULING

Before me is an application by way of summons in chambers under the provisions of Order VI Rule 13 (1) (d) of the Civil Procedure Rules for an order that the memorandum of appearance dated 11th November, 2002 and the defence dated 18th November, 2002 be struck out and/or expunged from the record because:-

- 1. The de fendant has filed a memorandum of appearance on 4 th November, 2002 as well as a defence on 11 th November, 2002*
- 2. The second set of pleadings are therefore an abuse of the court process and are an attempt to substitute pleadings unprocedurally.*

On 4th November, 2002 M/s Gitau Kariuki & Co Advocates entered appearance for the defendant but surprisingly, the defendant in person also entered appearance on 11th November, 2002 and filed a defence on the same day. Both the appearance and defence are dated 11th November, 2002. Another defence was filed by Gitau Kariuki & Company Advocates for the defendant on 20th November, 2002. That is what necessitated the present application.

Order III Rule 9 (1) of the Civil Procedure Rules (The Rules), provides that where a party after having sued or defended by an advocate intends to act in person in the cause or matter, he shall give a notice stating his intention to act in person. As the memorandum of appearance and the defence both dated and filed on 11th November, 2002, were filed after the memorandum of appearance filed by counsel on behalf of the defendant on 4th November, 2002, and without first filing a notice of intention to act in person, the memorandum of appearance and the defence filed by the defendant in person are not properly on record and we cannot have both sets on record. As the defendant is represented by counsel, what the defendant filed in person must be removed from the record.

The memorandum of appearance and defence, both filed by the defendant in person on 11th November, 2002, are struck out as they are not properly on record.

The application dated 14th April, 2003 is therefore allowed in part with costs to the Plaintiff.

Delivered at Nairobi this 22nd day of May, 2003.

S. C. ONDEYO

JUDGE

22.5.2003