



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**CIVIL SUIT NO. 484 OF 2001**

**CRISPIN OORO**

**MARGARET OWADE**

**JOHN DETE ..... PLAINTIFFS**

**- VERSUS -**

**MOMBASA LINERS**

**ANWARALI & BROTHERS LTD. .... DEFENDANTS**

**R U L I N G**

A chamber summons dated 14th August, 2003 was filed by the 2nd Defendant to have the plaint struck out under the Provisions of order VII rule 1 (2) and order 1 rule 12(2) of the civil Procedure Rules.

The main grounds put forward by the applicant are that the 2nd and 3rd plaintiffs did not file a verifying affidavit as required under order VII rule 1 (2) of the civil Procedure rules.

The second ground the applicant submitted in support of the application is that the written authority given to the 1st plaintiff was not filed with the plaint as required by order 1 rule 12 (2) of the civil Procedure rules.

The plaintiffs opposed the application by filing grounds of opposition dated 3rd September, 2003. The main ground being that the authority filed by the 1st plaintiff was sufficient and that even if the plaint was to be struck out it only related to the 2nd and 3rd plaintiff. It was submitted by Mr. Mwambi that there was no prejudice which the defendant will suffer. Mr. Gor for the 1st Defendant agreed with the submissions of Miss Juma for 2nd Defendant save for the fact that the plaint relating to the 1st plaintiff should not be struck out.

The plaint being sought to be struck out is the one dated 26th July, 2001 and lodged in this court on 28.9.2001. At the time of filing the plaint, the 1st plaintiff Mr. Crispin Ooro filed a verifying affidavit and stating that he was authorized by the 2nd and 3rd plaintiffs to file a verifying affidavit without annexing a written authority until on 15.9.2003 when the same was filed. It would appear the 2nd and 3rd plaintiffs were prompted to file the Authority dated 2nd September 2003 when the application was filed and served upon them.

The Provisions of Order 1 rule 12 (2) of the civil Procedure rules does not set the time in which a party should file a written authority from the other co-plaintiffs or Co-defendants. However it is a common ground, that a party derives jurisdiction or capacity in law to appear, plead or act on behalf of the donor of an authority after filing the authority.

In the case the authority was filed after the plaint was filed. It therefore means that the same was filed without authority. The verifying affidavit without the written authority annexed therein can only be treated to verify the plaint in respect of the claim by the 1st plaintiff. Hence the plaint in respect of the 2nd and 3rd plaintiffs cannot stand for want of verifying affidavit. The written authority filed later on

cannot cure the defect because of what I have stated.

Consequently, the chamber summons dated 14th August, 2003 is allowed as prayed in respect of the claim lodged by the 2nd and 3rd plaintiff with costs to the defendants.

Read this     day of     2003.

**J.K. SERGON**

**JUDGE**