



**IN THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO.877 OF 2002**

**MUSETO WOMEN GROUP .....PLAINTIFF**

**V E R S U S**

**JOHN KASALE MUTUNGU .....1ST DEFENDANT**

**JOSEPH KARIUKI NGIGI .....2ND DEFENDANT**

**OLEKEJUADO COUNTY COUNCIL .....3RD DEFENDANT**

**SARAH NAISANYA MUTUNGU .....4TH DEFENDANT**

**R U L I N G**

The single point for determination here is whether a suit started in the name of a registered Society and not in the name of its officers is competent and if not whether it can be amended to insert names of the office – bearers.

The plaintiff named in this suit is MUSETO WOMEN GROUP when this suit was filed on 9th July 2002 but later the same group made an application by way of Chamber Summons dated 4th July 2002 asking that under Orders 1 r10 and O.6A rr 3 & 5 and Section 3A of the Procedure Act to strike out the name of Museto Women Group and substitute it with the names of Sarah Mwangi, Esther Some and Bernadette Wathome, officials of the plaintiff Society.

In the plaint the plaintiff is referred to as a social welfare group, but the supporting affidavit of Sarah Mwangi says they thought it was a registered Company which of course is not reflected on the original pleadings.

Both Mr. Okeyo for 1st and 4th defendant and Mr. Maina for 2nd defendant have opposed this saying it is annulity from the beginning and cannot be amended.

Order 1 r10 of the Civil Procedure Rules allows the court to substitute plaintiff or added as a plaintiff where it was instituted in a wrong name of persons as plaintiff or whether it is doubtful if it has been instituted in the name of the correct plaintiff. The dominant point here is that where there is a bonafide mistake in describing a plaintiff the court should set it right. See Mulla on Code of Civil Procedure Volume II page 1008. “Bonafide” mean “good faith without fraud” and what constitutes it is a question of fact.

Defence counsel have raised this objection in limine as a matter of law but I think this is not correct. This matter cannot be argued unless the facts that establish bonafide mistake are stated and agreed.

A preliminary point cannot be resorted to unless the facts that form its basis are agreed upon and or are not disputable and besides what is asked for here is an exercise of discretion and these are not matters that are decided as preliminary points. I reject the preliminary point and direct that the application be heard in substance. A date be agreed on for hearing.

Cost to applicant.

**A. I. HAYANGA**

**J U D G E**

Read in Chambers on 13th November 2002 to Mr. Maina and Mrs Muchemi.

**A. I. HAYANGA**

**J U D G E**