



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO 2040 OF 2000

PAUL KOINANGE PLAINTIFF

VERSUS

KIPKORIRI & OTHERS..... DEFENDANTS

RULING

This application is seeking an order that the plaintiff's suit against the defendants be struck out and costs of this application and suit to be awarded to the defendants on grounds that the plaint is not accompanied by an affidavit verifying the correctness of the averments contained in the plaint. The respondent/plaintiff in its replying affidavit states that the plaint was filed with the verifying affidavit as required by the Civil Procedure Rules and both the plaint and the verifying affidavit were served upon the applicants.

It is clear that the plaint had an affidavit accompanying it. The contents of that affidavit however are as follows:

"I Paul Koinange of PO Box 42905, Nairobi do hereby solemnly make oath and state as follows:

1. THAT I am the plaintiff in this case and competent to swear this affidavit.
2. THAT I have read and understood the plaint herein filed against the defendants and verify the facts therein.
3. THAT there is no other suit past or present that has been filed by me herein against the defendants in respect of the claim in the plaint.
4. THAT what is deponed to herein is true and within my personal knowledge."

Order 7 rule 1(2) states as follows:

"(2) The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in the plaint".

It will be clear from the above rule that the verifying affidavit accompanying the plaint is required to verify the correctness of the averments in the plaint. For example, the plaint states at paragraph 10 that there is no pending proceedings nor has there been any suit between the plaintiff and the defendants on the same subject matter. That is to be verified as correct by the verifying affidavit. Looking at the verifying affidavit attached to the plaint all it says is that it verifies the plaint and the facts therein, but

does not state whether they are verified as correct or not. That in my humble opinion, does not meet the requirement of a verifying affidavit and thus the plaint before me is not in law accompanied by a verifying affidavit as is required by subrule 2 of order 7 rule 1. To allow the respondent/plaintiff to file another verifying affidavit will in effect mean that the other verifying affidavit will not be accompanying the plaint.

This plaint is struck out with costs to the applicant/defendant. Orders accordingly.

Dated and delivered at Nairobi this 15th day of February, 2001

J.W. ONYANGO OTIENO

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JUDGE