



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO.22 OF 2001

HON. PAUL GITHIOMI MWANGI .....PLAINTIFF  
VERSUS  
UNITED INSURANCE COMPANY LIMITED.....DEFENDANT

RULING

Mr. Gunjiri, the Learned Counsel for the Respondent raises a Preliminary Objection to the amended plaint and the amended Notice of Motion dated 19th January, 2001 on the grounds inter alia that the amended plaint was not accompanied by a verifying affidavit and therefore it should be struck out.

In reply Mr. Gitonga the Learned Counsel for the applicant while accepting that while amended plaint was not accompanied by a verifying affidavit the original plaint was accompanied by a verifying affidavit and that in any case there is now filed on 29.1.2001 a supplementary affidavit which the applicant was asking the court to admit.

Mr. Gunjiri is right when he argues that the amended plaint should have been accompanied by a verifying affidavit. The procedure to file a verifying affidavit to the Plaint was so as to cure the mischief of suit being filed without instruction from the would be plaintiff. The plaint, which was amended, had a verifying affidavit and the amended plaint does not change the parties.

I do not regard the failure to file a verifying affidavit at the time of filing the amended affidavit as fatal. Besides there is the supplementary affidavit which could be admitted in case the court exercises its discretion in favour of admission.

This objection is overruled. As to the other grounds which Mr. Gunjiri intends to raise I direct that they will be argued at the hearing of the main application.

**Delivered and dated this 7th day of February, 2001**

**KASANGA MULWA**  
**JUDGE**