

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1127 OF 2000

JOHN SENTERO KAMUKERE 1ST PLAINTIFF

PAUL SIRAONGA 2ND PLAINTIFF

PAUL NJOROGE 3RD PLAINTIFF

JAMES LOSHIRO 4TH PLAINTIFF

VERSUS

UNITED INSURANCE CO. LTD. DEFENDANT

RULING

On 26.6.2000 the plaintiffs filed a declaratory suit against the defendant to recover the sum of Shs.110,050/= which said sum had been awarded to them in Nairobi R.M.C.C. No. 6073 of 1999. The verifying affidavit accompanying the plaint purportedly sworn by all the plaintiffs was commissioned by Mr. Malonza who is the advocate for the plaintiffs and by whom the plaint is drawn. The commissioning of the affidavit by Mr. Malonza was clearly in breach of the proviso to Section 4(1) of the Oaths and Statutory Declarations Act and consequently the verifying affidavit was defective and incompetent.

The plaintiffs however applied for leave to amend the plaint. The application was allowed vide a consent order recorded on 26.10.2000 by Hon. Commissioner Ransley. The amended plaint was subsequently filed on 16.11.2000 without an accompanying verifying affidavit in total breach of O. VII Rule 1(2) of the Civil Procedure Rules.

By reason of the plaintiffs' failure to comply with O. VII Rule 1(2) of the Civil Procedure Rules, the defendant has moved this court by way of a Chamber Summons application to strike out the amended plaint.

As far as I can see, the correct position in this matter is that, as aforesaid, the original plaint having been verified by an incompetent affidavit clearly offends the provisions of Section 4(1) of the Oaths and Statutory Declarations Act. In the case of James Francis Kariuki V. United Insurance Co. Ltd. (Milimani H.C.C.C. No. 1450 of 2000) the court struck out a plaint under the same circumstances. No good reason has been advanced by the plaintiffs to justify a different approach in the instant case. As for the amended plaint, no attempt was made to verify it and it is hopelessly incompetent and must also be struck out.

For the above reasons, the application is allowed and both the original plaint and the amended plaint struck out with costs. The plaintiffs will bear the defendant's costs of this application.

Dated at Nairobi this 9th day of March, 2001.

T. MBALUTO

JUDGE