

REPUBLIC OF KENYA
HIGH COURT AT NAIROBI

civ case 434 of 01

MARGARET WANJIRU MURAYAPLAINTIFF

- V E R S U S -

FLORENCE MWANGI & ANOTHERDEFENDANTS

R U L I N G

Mr. Kanya for the Defendant has raised a preliminary objection to this suit on ground that the Plaintiff does not comply with order VII rule 1(1)(e) of the Civil Procedure Rules. He prays that the suit be struck out. That rule reads as follows:-

“(Order VII) 1 (1) The Plaintiff shall contain the following particulars -

(e) an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the Plaintiff and the Defendant over the same subject matter.”

The Plaintiff on record does not in fact comply with that requirement. Mr. Kihara for the Plaintiff on his part asks that he should be allowed time to amend the defect. I see no reason why he should not be allowed to do so.

Although Order VII rule 1 (1) (e) is couched in mandatory language, failure to comply with it is not fatal as the same can be cured by amendment. The Defendant’s preliminary objection is, therefore, sustained subject to the order allowing the Plaintiff leave to amend. The Defendant shall have the costs thrown away.

DATED and DELIVERED at NAIROBI this 4th day of April, 2001.

ALNASHIR VISRAM

JUDGE