



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
CIVIL CASE NO. 1 OF 2011

STEPHEN WANYEE ROKIPLAINTIFF

VERSUS

K-REP BANK LIMITED.....1ST DEFENDANT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

DAVID WAWERU.....3RD DEFENDANT

R U L I N G

1. This ruling relates to a Preliminary Objection raised by the 2nd Defendant. That Objection is dated 21st November 2018. The 2nd Defendant abandoned Objection No. 1 and No. 3. It however proceeded with Objection No. 2 as follows:

“That the verifying affidavit sworn on 4th July 2014 offends the mandatory provision of Section (1) of the Oaths and Statutory Declaration Act, Cap 15 Laws of Kenya, as Mr. Joseph Irungu Mwangi of Irungu Mwangi Nganga T. T. & Co. Advocates who commissioned the said verifying affidavit is the Advocate on record for the Plaintiff.”

2. Section 4(1) of Cap 15 provides:

“A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court:

Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the Advocate for any of the parties to the proceeding or concerned in the matter, or clerk to any such Advocate, or in which he is interested.”

3. To ascertain whether there is any ground for the Objection raised it is necessary to consider when the Plaintiff filed his pleadings and who then represented him.

4. The Plaintiff filed its original Complaint on 5th January 2011. That Complaint was filed on the Plaintiff’s behalf by the firm of Advocates, Anambo & Co Advocates. The verifying affidavit was commissioned by Hayanga Advocate.

5. The Plaintiff was represented, thereafter, by the firm of D. P. Kinyanjui Advocate.

6. The Plaintiff on 7th April 2011 filed an Amended Complaint through the law firm of Omondi Ombago Advocate. That amended Complaint was not supported by a verifying affidavit.

7. On 4th December 2012, the Plaintiff filed notice to act in person.

8. While the Plaintiff was acting in person, he filed another amended Complaint on 7th July 2014. The verifying affidavit in support of that amended Complaint was commissioned by Joseph Irungu Mwangi on 4th July 2014.

9. On 15th October 2018 the firm of Irungu Mwangi Advocates filed a notice of change to act for the Plaintiff.

10. From the above summary it is clear that when Joseph Irungu Mwangi Advocate commissioned the Plaintiff's verifying affidavit, on 4th July 2014, he was not acting and he was not on record for the Plaintiff. The Plaintiff was by then acting in person. It follows that Joseph Irungu Mwangi Advocate was not in breach with Section 4 (1) of Cap 15 when he commissioned the Plaintiff's verifying affidavit.

11. From the above analysis, it becomes clear that there is no merit in the 2nd Defendant's Preliminary Objection dated 21st November 2018, in as far as it concerns Objection number 2. That Objection is dismissed and since the costs follow the event the costs are awarded to the Plaintiff.

12. In the end the Objection number 2 in the Preliminary Objection dated 21st November 2018, filed by the 2nd Defendant is dismissed with costs to the Plaintiff.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 5th day of MARCH, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie.....COURT ASSISTANT

.....COUNSEL FOR THE PLAINTIFF

.....COUNSEL FOR THE 1ST DEFENDANT

.....COUNSEL FOR THE 2ND DEFENDANT

.....COUNSEL FOR THE 3RD DEFENDANT