



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISC. NO. 33 OF 2020**

**PASOGO WELFARE SOCIETY.....APPLICANT**

**=VERSUS=**

**GEORGE NGUGI WANJIRU.....RESPONDENT**

**RULING**

1. The firm of Enock Otieno & Company Advocates brought a notice of motion dated 4/5/2020 on behalf of Pasogo Welfare Society, seeking permission under Order 33 of the Civil Procedure Rules, to sue as a pauper. The application was supported by an affidavit sworn on 4/5/2020 by William Okello. It was accompanied with a statement of pauperism dated 4/5/2020, in which the applicant contended that it relied on contributions from its members who had been adversely affected by the Government's Covid-19 containment measures.

2. On 6/5/2020, this court directed the applicant to file the following documents: (i) certificate of registration; (ii) register of members of the applicant; (iii) each member's KRA annual tax returns for the last two years. The court further directed that the motion was to be heard on 27/5/2020. The applicant did not comply with the directions, and on 27/5/2020, the applicant asked for more time to comply. On 10/7/2020, the applicant filed a supplementary affidavit sworn on 22/6/2020 by William Okello. The said application dated 4/5/2020 is the subject of this ruling.

3. I have considered the application together with the accompanying documents. The criteria upon which jurisdiction to grant leave to sue in *forma pauperis* is exercised is set out under Order 33 of the Civil Procedure Rules. First, the application is required to be presented to the court by the applicant in person, unless the applicant is a person exempted from appearing in court under Section 82 of the Civil Procedure Act. Second, the application must contain particulars required in relation to pleadings. Further, the application must contain a signed statement setting out particulars of pauperism and inability to pay the prescribed court fees. Thirdly, the court is required to reject the application if: (i) it is not framed and presented in the above manner; (ii) the applicant is not a pauper; (iii) the applicant has within two preceding months disposed any property fraudulently or in order to be able to apply for leave to sue as a pauper; (iv) the allegations of the applicant do not disclose a cause of action; and (v) the applicant has entered into any agreement with reference to the subject matter of the proposed suit under which any other person has obtained an interest in the subject matter. Lastly, where the court sees no reason to reject the application on any of the above grounds, the court is required to set down the application for *interpartes* hearing.

4. The applicant contends that it is a society duly registered and existing under the Societies Act. It brought the present miscellaneous application in its own name. It is settled law that a society registered under the Societies Act lacks capacity to initiate court proceedings in its own name. A society initiates proceedings in the names of its officials. The present application should have been brought in the names of identified officials of Pasogo Welfare Society. On this ground alone, this application is incurably defective and stands rejected.

5. Secondly, the application was presented by the law firm of Enock Otieno & Co Advocates in blatant contravention of the mandatory requirements of Order 33 rule 3 of the Civil Procedures Rules which stipulates that an application of this nature shall be presented by the applicant in person. No explanation was tendered to justify the non-compliance with this mandatory requirement.

6. Thirdly, the applicant society has not presented to the court sufficient evidential materials to demonstrate that it is a pauper within the meaning of Order 33 rule 1 (2) of the Civil Procedure Rules. It is worthy noting that a registered society is obligated under Section 26 of the Societies Act to keep one or more books of accounts. Further, a society is obligated to file annual returns and accounts. Thirdly, a society is obligated under the existing tax regime to file annual tax returns. None of the above statutory returns documents was presented to the court to support the allegation that the applicant is a pauper. In my view, I do not think I would be properly exercising my jurisdiction if I were to contemplate granting leave to the applicant in the absence of the above relevant evidential materials to support the alleged pauperism.

7. The totality of the foregoing is that, the applicant has failed to satisfy the mandatory criteria upon which the plea for leave to sue as a pauper is admitted for *interpartes* hearing under Order 33 of the Civil Procedure Rules. Consequently, the notice of motion dated 4/5/2020 is rejected at this stage.

8. The application having been disposed at this *ex parte* stage, there shall be no order as to costs. The suit herein is marked as case closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF SEPTEMBER 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of: -**

**Mr Otieno for the Applicant**

