



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 193 OF 2012

KAAYA L. ENTERPRISES LTDPLAINTIFF

-V E R S U S-

COMMISSIONER OF CUSTOMS AND EXCISE

(OR KENYA REVENUE AUTHORITY) 1ST DEFENDANT

KENYA PORTS AUTHORITY 2ND DEFENDANT

EVERGREEN SHIPPING LINE 3RD DEFENDANT

UNICOM LTD 4TH DEFENDANT

RULING

1. Plaintiff filed this case against four Defendants.
2. The case was fast tracked due to information given by the Plaintiff's Learned Counsel when he informed the Court that the equipment that Plaintiff was shipping in, the subject of this dispute was required urgently by the Ugandan authority for purpose of building roads. Having fast tracked this case the Plaintiff closed its case and the 1st Defendant's case is now part heard after 1st Defendant has called two witnesses.
3. Looking at the proceedings it is clear that this matter was before a Judge at the outset on 22nd November 2012 for the hearing of the interlocutory application whereby the 3rd Defendant was represented by Mr. Munir Abubakar Masoud. The Learned Judge on that date recorded next to Masoud's name **“(Evergreen) agent.”**
4. Masoud continued to represent the 3rd Defendant throughout until and upto when the full hearing commenced. On 20th November 2014 the Court requested the parties to address it on whether Masoud should continue to represent the 3rd Defendant. It is to be noted that Masoud is not an Advocate.
5. I have considered the parties submissions. What is clear is that the 3rd Defendant is a foreign

company but is represented by an agent, namely Gulf Badr Group (K) Limited, herein in Kenya. It does seem that Masoud is either an employee or is associated with Gulf Badr Group.

6. In my view it was in error to have allowed Masoud who is not an Advocate, to act in this case as though he is an Advocate and to allow him cross examine witnesses and even address the Court when he had no evidence of being authorized by the 3rd Defendant. It is important to note that Masoud is not a Director of the 3rd Defendant and cannot, even if he receives authority from the 3rd Defendant, under seal, proceed to act for 3rd Defendant, cross examine witnesses as though he is an Advocate. If he does obtain such authority under seal, what at most he will be permitted to do is give evidence on behalf of the 3rd Defendant. To allow him to act as though he is an Advocate was flagrant violation of Section 9 of the Advocates Act Cap 16 and such violation cannot be permitted to continue. That Section provides-

“Subject to this Act, no person shall be qualified to act as an Advocate unless-

- a. **he has been admitted as an advocate; and**
 - b. **his name is for the time being on the Roll; and**
 - c. **he has in force a Practising Certificate; and for the purpose of this Act a Practising Certificate shall be deemed not to be in force at any time while he is suspended by virtue of Section 27 or by an order under Section 60(4).”**
7. It is clear that grave error has occurred in permitting Masoud to represent the 3rd Defendant as has occurred in this matter.
 8. What is not clear from the Court record is, did the Plaintiff ever serve Summons and Plaint on the 3rd Defendant Company, which is registered outside Kenya? In all probability Plaintiff has to date not served that party since I could not see an affidavit of service showing that such service was effected.
 9. What direction then should the Court give? In my view the first direction is to deny further audience to Masoud and to stay further hearing of this suit until such time the 3rd Defendant does appear confirming service in respect of these proceedings and confirming that if the case does proceed from where it stopped when Masoud was denied audience whether it would suffer any prejudice. In that regard all documents filed by Masoud are hereby struck out.
 10. I therefore order stay of this suit until further orders when the 3rd Defendant shall be properly represented or there shall be evidence of service of Summons and Plaint on the 3rd Defendant. It is so ordered.

DATED and DELIVERED at MOMBASA this 3RD day of DECEMBER, 2014.

MARY KASANGO

JUDGE