



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC NO. 58 OF 2012

JEMIMA GATHONI WARUIPLAINTIFF/RESPONDENT

VERSUS

CHARITY WANJIKU1ST DEFENDANT/APPLICANT

JOSPHAT GITARI2ND DEFENDANT/APPLICANT

RULING

This is in respect to the defendants/applicants Notice of Motion dated 20/3/2013 and filed in Court on 21/3/2013 seeking the following orders:-

1. That this Court do strike out this suit with costs.
2. That the costs of this application be provided for.

The application itself is **brought under Section 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules** and is supported by the affidavit of the 2nd defendant/applicant and the grounds on the face of the application.

The application is opposed and a replying affidavit has been filed by the plaintiff/respondent.

Both counsels have filed submissions on the same.

Although the plaintiff/respondent's counsel has not addressed me on whether this Court's jurisdiction has properly been invoked, I will nonetheless decide this matter by ruling on whether or not this application can lie.

The remedy being sought is the striking out of the suit filed herein. As stated above, the application is founded under **Section 3A of the Civil Procedure Act and order 51 Rule 1 of the Civil Procedure Rules**. It has been stated time and again that **Section 3A of the Civil Procedure Act** should only be invoked where there are no provisions that can be invoked to move the Court. Where the law provides for specific provisions, they must be adhered to. Litigants and their counsels must appreciate that justice must be administered in accordance with the law and even **Article 159 (1) (d) of the Constitution** does not state that the law should not be followed. It only states that the Courts shall not be hampered by undue technicalities in administering justice. In a situation such as this where the litigants have the benefit of counsel, it should be expected that pleadings ought to be properly drawn.

The power to strike out a pleading is provided for under **Order 2 Rule 15 of the Civil**

Procedure Rules and therefore it is not proper to invoke the inherent jurisdiction of the Court under **Section 3A of the Civil Procedure Act** to bring an application such as the one before me.

Accordingly, I order that the Notice of Motion dated 20/3/2013 be and is hereby struck out with costs.

B.N. OLAO

JUDGE

1/7/2013

1/7/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

Mr. Kagio for Mr. Kathungu for Plaintiff present

Mr. Abubakar for Defendant present

COURT: Ruling delivered this 1st day of July 2013 in open Court.

B.N. OLAO

JUDGE

1/7/2013