



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CIVIL CASE 172 OF 2010

- 1. SAMUEL KALOVOTO SEKE**
2. FRANCIS NGIGE WAWERU PLAINTIFFS/APPLICANTS
VERSUS
1. WASWA INVESTMENT CO. LTD.
2. THE LAND REGISTRAR – MACHAKOS DEFENDANTS/RESPONDENTS

R U L I N G

Before me is an application dated 25th January 2012, filed by the 1st Plaintiff herein, Samuel Kalovoto Seke. It was brought under Order 1 Rule 1, Order 2 Rule 15(I) (d) and Section 3A of the Civil Procedure Act (Cap 21). The main prayer is as follows:-

c. THAT, the suit by the 1st plaintiff/applicant be struck out together with all subsequent proceedings and cost be appropriately made.

It is basically an application in which the complaint is that the 1st plaintiff did not instruct DK Thuo & Company Advocates, to file a suit for him. It is stated that the 2nd plaintiff Francis Ngige Waweru, is the one whom, without justification, has dragged the 1st plaintiff into the suit.

The application is opposed. The 2nd plaintiff, Francis Ngige Waweru, filed a replying affidavit which he swore on 17th April 2012. In paragraphs 8 and 9 of the said replying affidavit, he stated:-

8. THAT at that point I agreed with second (sic) plaintiff that we commence this action against the defendants herein through Ms. DK Thuo & Company Advocates who had previously acted for us in the sale transaction.

9. THAT it is therefore not true that the first plaintiff had not given instructions for the commencement of this suit.

On the hearing date, Mr Kaluu, for the 1st plaintiff, and Mr Thuo, for the 2nd plaintiff made oral submissions in court.

The rules of Civil Procedure require that when a plaint is filed, a verifying affidavit be also filed. The verifying affidavit, herein dated 31st August 2010, filed with the plaint, was sworn by Francis Ngige Waweru, the 2nd plaintiff. It is deponed therein that the 1st plaintiff gave the 2nd plaintiff authority to swear that affidavit. Now, the 1st plaintiff says that he did not give that authority. He cannot be forced to

remain in the proceedings which he has disowned. The 2nd plaintiff has not shown any written authority evidencing his contention that he was given the authority to commit the 1st plaintiff.

In view of the above, I allow the application and grant prayer c. The 2nd plaintiff will pay the 1st plaintiff's costs of the application.

Dated and delivered this **12th** day of **July** 2012.

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George Dulu

Judge

In the presence of:

Nyalo – Court clerk

Ms. Thiongo holding brief for Mr Thuo for 1st Plaintiff

N/A for 2nd Plaintiff