



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS

Civil Case 2738 of 1992

PAN AFRICA BANK LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

JAMES NJAGI NJIRU.....DEFENDANT/APPLICANT

RULING

Before me is an application by way of Notice of Motion brought pursuant to S. 3A of the Civil Procedure Act, order IXA Rule 10 & 11 Order XXI Rule 22 of the Civil Procedure Rules. The application is supported by the grounds on the face of the application and the affidavit of the Defendant dated 17th December, 2007.

The application is not opposed as no grounds of opposition or Replying Affidavit were filed.

The application was purportedly filed by **K.H. Osmond & Co.** Advocates. It is noteworthy that the current Advocates came on record on 11th September, 2009 yet the application was filed on 17th November, 2007, when **K.H. Osmond** was still on record then, however the 15th of April, 2009 in a letter addressed to counsel on record for the respondent **K.H. Osmond** stated in part:-

“... I am amazed to read the contents of your letter. Mr. Njiru removed the file several years ago and I am compelled to know who is masquerading and filing two applications on 17th December, 2007 in my name.

I know absolutely nothing about these and would you please be kind enough to send me copies and also to identify the advocate concerned who is masquerading as myself.”

As stated above the Plaintiff did not respond to the application but in a letter dated 14th May, 2009 addressed to **K. H. Osmond** and copied to the Registrar, the Plaintiff/Respondent’s counsel not only brought to the court’s attention the fact that there was a person signing and filing and holding out as **K.H.**

Osmond, the counsel also asked the court to expunge the documents from the court filed. I note that the said advocate did not make a formal application at the same time. The above letter from **K. H. Osmond** on the court file remains unchallenged. The question that begs for an answer is whether in the absence of the Plaintiff/Respondent, the Court should give a blind eye to this illegality? I think not.

The recognized agent as at 17th December, 2007 was **K.H. Osmond** and he did not file the current application. It therefore follows that the application purportedly filed by **K.H. Osmond** is not properly before the court.

In the circumstances therefore I expunge the same and the second application also dated 17th December, 2008 purportedly filed by **K.H. Osmond**.

Dated and delivered at Nairobi this 4th day of November, 2009.

ALI- ARONI

JUDGE