

Athman v Formica

REPUBLIC OF KENYA

High Court, at Mombasa May 31, 1991

Wambilyangah J

Civil Suit No. 311 of 1991

May 31, 1991, Wambilyangah J delivered the following Ruling.

The defendant has been able to demonstrate that he not only owns property in this country but that he is operating profitable business within the country in partnership with some reputable indigenous Kenyans. So that even if he is, admittedly, an Italian national he has no immediate prospects or any reason at the moment which will compel him to leave this country before this suit is determined. Nor has the plaintiff shown any. And this brings me to the affidavit filed in support of the application. Paragraphs 6, 7 and 8 of that affidavit are based on information and belief and grounds of the beliefs are not stated. That is an obvious breach of Order XVIII rule 3 of the civil Procedure Rules. In the case of J.L. Young Manufacturing Co. Ltd. 1900 & ch.753 at p.755 it was said as follows:-

“The truth is that the drawer of the affidavit thinks that he can obtain an improper advantage by putting in a statement on information and belief, and he rests his case upon that. I never pay the slightest attention myself to affidavits of that kind whether they be used on interlocutory application or on final ones, because the rule is perfectly general – that, when a deponent makes a statement on his information and belief, he must state the ground of that information and belief.”

The plaintiff utterly failed to state the ground for believing (as he depones in paragraph 6 of his affidavit) that “the defendant will most likely leave the country for unknown destinations.” And as this is his main ground for the application it follows that he has not made out the requisite case to warrant me to give him the prayers sought. I therefore dismiss the application with costs.