



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL AND LAND DIVISION

ELC. CIVIL SUIT NO. 609 OF 2012

VINI INVESTMENTS LIMITED PLAINTIFF/RESPONDENT

VERSUS

JAMES MBURU NDUU.....DEFENDANT/APPLICANT

RULING

Coming up before me for determination is the Notice of Motion dated 12th April 2013 in which the Defendant/Applicant seeks for orders striking out the pleadings by the Plaintiff with costs to the Defendant.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Defendant, James Mburu Nduu, sworn on 12th April 2013 in which he averred that the Plaintiff instituted this suit through LJA Associates on 17th September 2012. He further averred that advocates are authorized to practice under their names and are barred from describing themselves otherwise than as advocates and that the Law Society of Kenya has not waived the provision hence the firm is practicing as such illegally. He further averred that as a result, the suit instituted against him is thus misconceived, an abuse of the court process and is improper and should be struck out. He further averred that the pleadings herein should on that basis be struck out and this suit should be dismissed.

The Application is contested. Linda Watiri Muriuki, a Senior Partner of LJA Associates filed her Replying Affidavit sworn on 24th July 2013, in which she averred that this suit was indeed instituted through her firm LJA Associates Advocates on 17th September 2012. She further averred that LJA Associates Advocates is a culmination of the merger between the firms of Havelock Muriuki & Raval Advocates, Singh Gitau & Co. Advocates and Mukite Musangi & Co. Advocates whose founding partners are Linda Watiri Muriuki, James Singh Gitau and Andrew Mukite Musangi. She further averred that on 1st August 2011, she sent an email to the Chief Executive Officer of the Law Society of Kenya, Mr. Apollo Mboya, informing him of her intention to form a partnership with James Singh and Andrew Musangi and subsequently name the partnership as LJA Associates, the name constituting the initials of the founding partners and asked for the Law Society of Kenya's position on the matter. She further averred that in response, the said Chief Executive Officer informed her that what was required was a notification signed by all the partners to the effect that they had agreed to enter into a partnership and intended to operate under the name and style of LJA Associates. Further, she averred that the said Chief Executive Officer stated that "the name LJA Associates is acceptable since I have noticed that they are the initials of the Partners". She further stated that this observation by the said Chief Executive Officer was irrefutable evidence that the name LJA Associates falls within the provision of Rule 12 of the Advocate Practice Rules. She further indicated that in compliance to the instructions from the said Chief

Executive Officer, she sent a letter dated 4th August 2011 to the Law Society of Kenya attaching the Notification of the formation of the partnership. She further averred that it now comes as a surprise that the Applicant alleges that pleadings filed under the name and style of LJA Associates are improper and misconceived and are an abuse of the court's process. She further stated that it is not true that her firm is practicing illegally and that the provisions of Rule 14 of the Advocates Practice Rules are not applicable in this instance. She further averred that having approved the use of the name LJA Associates, the Law Society of Kenya was estopped from denying its validity.

Both the Defendants and the Plaintiff filed their written submissions which have been read and taken into account in this ruling.

The issue that emerges for determination is whether the pleadings in this suit should be struck off and the suit be dismissed on the ground that the firm of lawyers who act for the Plaintiff and filed the pleadings herein, namely LJA Associates, is in contravention of Rule 12 of the Advocates Practice Rules for failing to use the names of the partners.

Rule 12 of the Advocates Practice Rules provides as follows:

“No Advocate shall practice under any name other than his own name or the name of a past or present member or members of the firm.”

Is LJA Associates the name of one of the partners in the law firm or the name of a past member or members of the firm? The law firm has gone to great lengths to demonstrate the genesis of that name LJA Associates. To that extent, Linda Muriuki demonstrated that the name of their firm was coined from the first letter of the names of the three partners, namely Linda, James and Andrew. To that word LJA, they chose to add the word “Associates”. This is how they came up with the name LJA Associates. To my mind, the name LJA Associates is not the name of any of the partners whether present or past, of the law firm and therefore does not comply with Rule 12 of the Advocates Practice Rules.

It would appear however, that there is a growing trend in the legal sector in Kenya, whereby advocates are choosing to coin names for their law firms which are not their own names or names of present or past members of their law firms. **Rule 14 of the Advocates Practice Rules** provides as follows:

“The Council of the Law Society of Kenya shall have power to waive in writing any of the provisions of these Rules in any particular case.”

The provision clearly empowers the Council of the Law Society of Kenya to waive the requirement under Rule 12 cited above. Linda Muriuki was quite emphatic that no less than the Chief Executive Officer of the Law Society of Kenya approved their use of the name LJA Associates in a communiqué he sent to her. Does this suffice? To my mind, while the Chief Executive Officer is quite authoritative on matters touching with the practice of advocates, he is not the Council of the Law Society. Rule 14 of the Advocates Practice Rules cited above confers the power to waiver on the Council of the Law Society, not the Chief Executive Officer of the Law Society of Kenya. **Section 13(1) of the Law Society of Kenya Act Cap. 18** describes the constitution of the Council as follows:

“For the proper management of the affairs of the society, there shall be a council consisting of a chairman, a vice-chairman and ten other members all of whom shall be members of the society.”

To that extent therefore, I do not agree with Linda Muriuki that she does not need to seek a waiver from the Council of the LSK. Indeed, there is already evidence that the LSK has been considering this very issue. In his letter dated 6th March 2013, the same Chief Executive Officer of the LSK wrote to the Defendant's advocates and stated as follows:

“The Council (of the LSK) in its meeting held on 11th February 2013 resolved to reserve a decision on the use of names such as above referenced (LJA Associates) until after the

committee to be constituted look at the issue to enable the Council come up with a policy on the same.”

While it is now well over one year since this communication was made, no update on the final position taken by the LSK was given to this court by either of the parties herein.

Overall, I am satisfied that the name of the Plaintiff’s law firm, namely LJA Associates, is not in compliance with Rule 12 of the Advocates Practice Rules. I am of the view that the partners of this law firm need to seek a waiver under Rule 14 from the LSK for them to continue to carry on the business of a law firm under this name. I give them a time period of 60 days from the date of this Ruling to pursue that direction and confirm to the court that this has been accomplished prior to continuing to represent the Plaintiff in this matter.

I decline to strike out the pleadings in this suit for the reason that the ills or mistakes of the advocates should not be visited upon the litigants. The Plaintiff has not been involved in any manner in this matter of his advocates predicament and should therefore not be punished for it save that there will be a slight delay of 60 days to allow his advocates to regularize their position.

It is so ordered.

DELIVERED AND SIGNED AT NAIROBI THIS 16TH DAY OF MAY 2014.

MARY M. GITUMBI

JUDGE