

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00391-BNB

NYAHUMA KAMAU MACHARIA,

Plaintiff,

v.

SECRETARY OF VETERANS AFFAIRS ERIC KEN SHINSEKI,

Defendant.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 04 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Nyahuma Kamau Macharia, has filed *pro se* a complaint. He has been granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

The Court must construe the complaint liberally because Mr. Macharia is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Macharia will be ordered to file an amended complaint.

The Court has reviewed the complaint and has determined that the complaint is deficient because it does not comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. The twin purposes of a complaint are to give the opposing parties fair notice of the basis for the claims against them so that they may respond and to allow the court to conclude that the allegations, if proven, show that the plaintiff is entitled to relief. *See Monument Builders of Greater Kansas City, Inc. v.*

American Cemetery Ass'n of Kansas, 891 F.2d 1473, 1480 (10th Cir. 1989). The requirements of Fed. R. Civ. P. 8 are designed to meet these purposes. **See TV Communications Network, Inc. v. ESPN, Inc.**, 767 F. Supp. 1062, 1069 (D. Colo. 1991), **aff'd**, 964 F.2d 1022 (10th Cir. 1992). Specifically, Rule 8(a) provides that a complaint “must contain (1) a short and plain statement of the grounds for the court’s jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought.” The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1), which provides that “[e]ach allegation must be simple, concise, and direct.” Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8.

Mr. Macharia fails to provide a short and plain statement of the grounds for the Court's jurisdiction. **See** Fed. R. Civ. P. 8(a)(1). His jurisdictional statement, “Article III states that the judicial power of the federal courts extends to all cases and controversies which arise under the Constitution and the federal laws of the United States,” **see** complaint at 2, does not provide a short and plain statement of the grounds for the Court's jurisdiction pursuant to Fed. R. Civ. P. 8(a)(1). Mr. Macharia also fails to provide a short and plain statement of his claims showing that he is entitled to relief. **See** Fed. R. Civ. P. 8(a)(2). The essence of Mr. Macharia's complaint is his allegation that the Veterans Administration refused to provide him with health care for Hepatitis C because his urinalysis tested positive for drugs. He considers Latrice L. Williams' alleged statement that he has been dishonest about his drug use to have

defamed him. He also complains that he did not agree in writing to submit to urinalysis testing.

Mr. Macharia will be ordered to file an amended complaint if he wishes to pursue his claims in this action. He is reminded that he must provide a short and plain statement of the basis for the Court's jurisdiction and of his claims so that the Court and the defendant understand what he is claiming in this action and are be able to respond to those claims. Accordingly, it is

ORDERED that Plaintiff, Nyahuma Kamau Macharia, **within thirty (30) days from the date of this order**, file an amended complaint that complies with the pleading requirements of Fed. R. Civ. P. 8 as discussed in this order. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Macharia, together with a copy of this order, two copies of the following form: Complaint. It is

FURTHER ORDERED that, if Mr. Macharia fails within the time allowed to file an amended complaint that complies with this order to the Court's satisfaction, the complaint and the action will be dismissed without further notice.

DATED March 4, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-00391-BNB

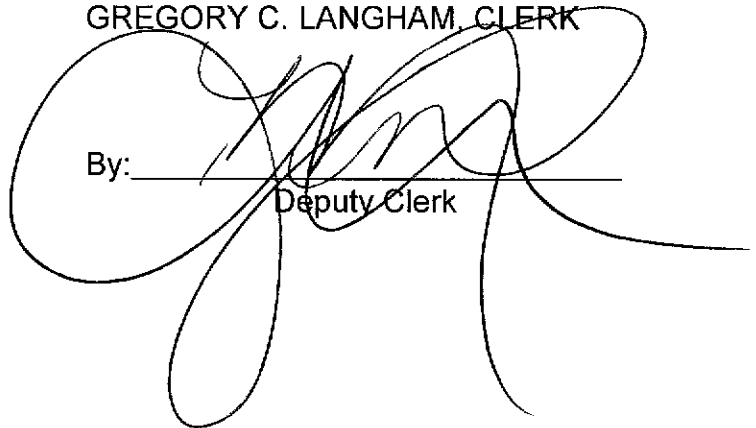
Nyahuma Kamau Macharia
PO Box 1603
Aurora, CO 80040

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Complaint form** to the above-named individuals on 3/4/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line. The text 'GREGORY C. LANGHAM, CLERK' is printed above the signature, and 'Deputy Clerk' is printed below the signature line.