



**Nyala Dairy Multi-Purpose Coop Society Ltd v Nyandarua County Government & another
(Petition E001 of 2024) [2024] KEHC 11352 (KLR) (Civ) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
PETITION E001 OF 2024
CM KARIUKI, J
SEPTEMBER 26, 2024**

BETWEEN

NYALA DAIRY MULTI-PURPOSE COOP SOCIETY LTD PLAINTIFF

AND

NYANDARUA COUNTY GOVERNMENT 1ST DEFENDANT

NYANDARUA COUNTY ASSEMBLY 2ND DEFENDANT

RULING

1. The applicant, via application dated 20/2/2024, seeks the set side dismissal orders of the application filed and dated 30/1/2024, which was dismissed and /or struck out on 5/2/2024 for non-attendance and non-commissioning of the supporting affidavit.
2. The grounds principally tendered are that the Advocate attempted to join the link for purposes of the hearing of the application, but it “appeared” that the court was not sitting. Thus dismissal.
3. However, the second reason for dismissal /or striking out of the application was non-commissioning of the affidavit supporting it, which has not been cured to date; thus, as it stands, the application intended to be reinstated is unsupported by a competent affidavit.
4. In our Kenyan jurisdiction, an unsworn affidavit holds no legal validity. Here are the key points to understand:
5. An affidavit must be sworn before a commissioner for oaths, notary public, or magistrate to be legally recognized. An unsworn affidavit is essentially a statement without any legal backing.
6. Courts will not accept unsworn affidavits as evidence. For an affidavit to be admissible, it must comply with the requirements set out in the [Oaths and Statutory Declarations Act](#).



7. Submitting an unsworn affidavit can lead to the dismissal of the application or case, as it fails to meet the necessary legal standards.
8. The applicant, having submitted an application without an affidavit, the petitioner, could take the following steps to rectify the mistake:
 - i. File a Supplementary Affidavit: Prepare a supplementary affidavit that includes all the necessary facts and information that should have been in the original affidavit. This affidavit should be sworn before a commissioner for oaths or a notary public.
 - ii. Submit a Motion to Amend: File a motion in court requesting permission to amend your application to include the supplementary affidavit. In your motion, explain the oversight and the importance of the affidavit to your application.
 - iii. Attend the Hearing: Be prepared to attend a court hearing where you may need to explain the reason for the omission and why the court should allow the amendment. The court will consider whether the omission was inadvertent and whether allowing the amendment would cause any prejudice to the other party.
9. Serve the Other Party: Ensure that the other party involved in the case is served with the motion and the supplementary affidavit. They should have an opportunity to respond to your request.
10. He took none of the available options to date, thus leaving the court with no option but to direct that:
 - i. The application herein dated 20/2/2024 is rejected with orders in the main cause.
 - ii. Parties to file and serve submissions on pending Petition and exchange within 30 days.

RULING, DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 26TH DAY OF SEPTEMBER 2024

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CHARLES KARIUKI
JUDGE

