



**Cassiede v Peter Kimani Kairu t/a Kimani Kairu & Co. Advocates;
Directorate of Immigration Services & another (Interested Party) (Civil
Suit 39 of 2007) [2022] KEHC 474 (KLR) (Civ) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 474 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
CIVIL SUIT 39 OF 2007
A MABEYA, J
MAY 26, 2022**

BETWEEN

ANNA MARIE CASSIEDE BRUNO CASSIEDE RESPONDENT

AND

**PETER KIMANI KAIRU T/A KIMANI KAIRU & CO.
ADVOCATES APPELLANT**

AND

**DIRECTORATE OF IMMIGRATION SERVICES INTERESTED PARTY
ATTORNEY GENERAL INTERESTED PARTY**

RULING

1. This is a ruling on the defendant's Motion on Notice dated 11/2/2022. It was brought pursuant to Articles 20, 21, 22, 23, 35, 48, 50, 159 and 259 of *the Constitution* of Kenya and Order 8 Rule 3 of the *Civil Procedure Rules*.
2. The defendant sought an order directing the 1st interested party to avail to the defendant the following information from the records in its possession: -
 - (a) Whether from the records of his travel into and out of Kenya, the 1st plaintiff, Bruno Cassiede, was present in Kenya on 20/9/2021.
 - (b) When the 1st plaintiff was last in Kenya prior to 20/9/2021.



3. The application is premised on the grounds that the 1st defendant had filed in Court a replying affidavit alleged to have been sworn in Nairobi on 20/9/2021 before the Advocate, Viola Odhiambo, a Commissioner of Oaths.
4. The 1st plaintiff is a French national and resides in France. The defendant believes that the plaintiff did not travel to Kenya on or around 20/9/2021. In the premises, the replying affidavit filed before this Court was a misleading and false document which ought to be expunged from the court's record.
5. That the information sought by the defendant is held by the 1st interested party and the plaintiff requires the same for the exercise of his rights as a party in the suit to, inter alia, prove that the suit against him is being prosecuted without the authority of the 1st plaintiff and hence the falsification of pleadings before court.
6. There is no opposition on record filed in response to the application. However, on 10/3/2022, the parties' respective Advocates appeared before this court virtually. Mr. Ojiambo, Learned Counsel applied to withdraw the affidavit sworn on 20/9/2021 in order to concentrate on the suit itself. He further applied for leave to file another affidavit within 14 days.
7. Mr. Marete, Learned Counsel for the defendant argued that the withdrawal did not solve the issues raised and that it had implications on the way the suit had been conducted.
8. Nevertheless, the Court granted leave to the plaintiff to withdraw the impugned replying affidavit and file another one. However, Mr. Marete insisted to argue the present application. By the time the present application was being argued, the plaintiff had already filed another replying affidavit which showed that it was sworn in Paris France.
9. The Court has considered the entire record. The issue is whether the orders sought are desirable. Mr. Ojiambo indicated that the orders were directed upon parties who had not been enjoined in these proceedings. Mr. Marete retorted that the said parties had been properly served and their absence should not defeat the cause of justice.
10. It is not in dispute that the 1st plaintiff is a French national who resides in France. It is also not disputed that he filed in these proceedings a replying affidavit sworn on 20/9/2021 at Nairobi Kenya Nairobi before the Commissioner of Oaths Viola Odhiambo.
11. An affidavit is a sworn statement of evidence, therefore, it has to be a truthful statement. The 1st plaintiff has not rebutted the allegation that he was not in Nairobi during the swearing of the said affidavit in the presence of the commissioner of oaths. Further, his advocate later on withdrew the said affidavit.
12. The applicant indicates that the information sought is crucial in this case. Litigation is about seeking the truth and justice for the disputants. If there is evidence that can assist the Court to arrive at a just decision, there is no reason to bar such evidence.
13. In the present case, the parties against whom the orders are being sought were not parties to the suit. However, they are public institutions who are maintained by tax payers, of which the applicant is one. They were served with the application and an affidavit of service filed.
14. In my view, a right to information is fundamental especially where a subject contends that such information is crucial for him to exercise the right to a fair hearing. Although the plaintiff contended that the orders will lead to the delay in concluding the matter, I note that this is a 2007 matter. The orders sought can be summarily be complied without causing much delay.



15. In any event, it is in the public interest for the Court to ascertain the truth, whether or not the plaintiff presented before this Court misleading information. It is a matter that goes to the integrity of the proceedings before Court.
16. In view of the foregoing, I find the application to be in order and I allow the same in terms of prayer 2. The same to be complied within 14 days of service of the order. The costs of the application shall be in the cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY, 2022.**

A. MABEYA, FCI Arb

JUDGE

