



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 90 OF 2020

ABDIRAHMAN MOHAMED ABDILLE.....PLAINTIFF

VERSUS

INDEPENDENT ELECTORAL BOARD

KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY.....1ST RESPONDENT

KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY.....2ND RESPONDENT

DAHAB HUSSEIN MADEY.....1ST INTERESTED PARTY

HAREDHA HUSSEIN ABDIRAHMAN.....2ND INTERESTED PARTY

ALASA SIGAR HUSSEIN.....3RD INTERESTED PARTY

SALATHA ABDULLAHI HASSAN.....4TH INTERESTED PARTY

HALIMA ABDI ABDILLE.....5TH INTERESTED PARTY

ABDULLAHI ABDI HERSI.....6TH INTERESTED PARTY

RICHARD NGATIA WAWERU.....7TH INTERESTED PARTY/RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 21st July 2021 taken out by the plaintiff/applicant whereof he sought for the following orders:

i. THAT Richard Ngatia, the president of the 2nd defendant and the contemnor herein be and is hereby summoned to appear in court to be cross-examined on his affidavit sworn on 14th October 2021.

ii. THAT in the alternative prayer 1, Mr. Richard Ngatia's affidavit sworn on 14th October 2021 be struck-out and expunged from the record.

iii. THAT costs of this application be provided for.

2) The plaintiff/applicant swore an affidavit which he filed in support of the motion. The 7th interested party filed a replying affidavit to oppose the motion. This court gave directions to have the motion disposed of by written submissions.

3) I have considered the grounds stated on the face of the motion dated 21st July 2021 plus the facts deponed in the affidavits filed in support and against the application. I have further considered the rival submissions plus the authorities cited.

4) It is the submission of the plaintiff/applicant that the contemnors signed two affidavits with different signatures and the authenticity of the

affidavit sworn on 14th October 2020 should be established. The applicant further argued that it is in the interest of justice and fairness that the genuineness of the signature on aforesaid affidavit be established before this court considers the contempt application.

5) It is further argued that a cross-examination of the contemnor on the replying affidavit particularly paragraphs 6 and 8 would assist in establishing the truth about who signed the impugned letter.

6) The 7th interested party who is the respondent opposed the application arguing that the motion lacks a basis in law. He pointed out that cross-examination of a deponent of an affidavit is not available for purposes of verification of signatures by a party.

7) It is not in dispute that the main reason why the plaintiff/applicant is seeking to have the respondent cross examined on his affidavit is for purposes of establishing the authenticity of the signature appended on the affidavit sworn on 14th October 2020.

8) With respect, I am persuaded by the respondent's argument that the cross-examination of deponent of an affidavit cannot be used as a process of verifying the authenticity of a signature of a party. Where a party has doubts on the genuinity of another party's signature or handwriting, he must call for a document examiner to determine such doubts.

9) The verification of signatures is therefore not a ground for summoning a party for cross-examination on the contents of an affidavit under Order 19 rule 2 of the Civil Procedure Rules.

10) In the end, the motion dated 21st July 2021 is found to be without merit. It is dismissed with costs abiding the outcome of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

..... for the Defendant