



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. E290 OF 2019

BETWEEN

JUNGLE ENERGY (K) LIMITED.....PLAINTIFF

AND

RWATHIA DISTRIBUTORS LIMITED,

KIEWA GROUP LIMITED & VIATECH

SERVICES LIMITED CONSORTIUM

(R.K.V. CONSORTIUM).....DEFENDANT

RULING

1. The plaintiff has moved the court by Notice of Motion dated 15th November 2019 invoking, inter alia, **Order 2 rule 15(1)(a)(b)(c) and (d)** of the **Civil Procedure Rules** (“the **Rules**”) praying that the Defence herein be struck out and judgment be entered as prayed in the Plaintiff.
2. The application is supported by the affidavit of Evans Karanja Githae, the plaintiff’s Market Agent, sworn on 15th November 2019. At paragraph 3 thereof he states as follows:

[3] To avoid duplication of documents, I will refer to the documents filed contemporaneously with the plaintiff which I would like to produce as evidence in this court.

3. Now it is mandatory that the application filed by the plaintiff be supported by an affidavit as the affidavit constitutes the evidence upon which the court acts. The affidavit in support of the application does not contain the annexures and the documents filed in support of the plaintiff have not been verified on oath. As the application is one that seeks a summary hearing of the claim, the documents relied upon must be annexed to the affidavit and verified as required by **Rule 9** of the **Oaths and Statutory Declarations Rules** which provides that -

All exhibits to Affidavits shall be securely sealed thereto under the seal of the Commissioner, and shall be marked with serial letters of identification.”

4. In light of the overriding objective, I grant the plaintiff the opportunity to rectify the error and shall give direction upon the delivery of this ruling.

DATED and DELIVERED at NAIROBI this 20th day of FEBRUARY 2020.

D. S. MAJANJA

JUDGE

Mr Kigata instructed by Wamae and Allen Advocates for the plaintiff.

Mr Mutai instructed by Maina and Maina Advocates for the defendant.