



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL SUIT NO. 82 OF 2014**

**CHARLES METO.....PLAINTIFF**

**VERSUS**

**AMOS KOSGEY.....1<sup>ST</sup> DEFENDANT**

**DAVID MUGUN.....2<sup>ND</sup> DEFENDANT**

**COLLINS SAINNA.....3<sup>RD</sup> DEFENDANT**

**CAD HOLDINGS LIMITED.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. This court was expected to deliver judgment in this matter today. The trial of this matter commenced on 18<sup>th</sup> September 2019. On that day as the plaintiff was about to take the stand, to testify, my court assistant informed me that there was a problem with the recording system. Proceedings in the Commercial & Tax Division of the High Court Nairobi are recorded as a pilot scheme of the Judiciary. Having been told of that problem I ordered for a short adjournment to enable ICT officers to rectify the problem.

2. On resuming the hearing the plaintiff Charles Metto, as the proceedings reveal, did not take an oath and proceeded to testify as though he had. It follows that his evidence was taken without him having been sworn. Section 14 of Oaths and Statutory Act Cap 15 provides that:

***“14. Authority to administer oaths and affirmations***

***All courts and persons having by law or consent of the parties authority to receive evidence are authorized to administer, by themselves or by an officer empowered by them in that behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them by law.”***

3. It was necessary for the plaintiff to be sworn before testifying.

4. What then should be done, now that it is clear the evidence of the plaintiff was received without the plaintiff having taken oath? I believe the interest of justice will best be served by the plaintiff being recalled to give evidence on oath. At the reading of this Ruling I will give directions on how that evidence will be received, because I was informed during the trial, that the plaintiff is a resident of United States of America.

**DATED, SIGNED and DELIVERED at NAIROBI this 11th day of March 2020.**

**MARY KASANGO**

**JUDGE**

**Ruling read in open court in the presence of**

Court Assistant.....Sophie

.....for the Plaintiff

.....for the Defendants