



**GACHUI AKOTHAЕ**  
**RENGERUA.....APPELLANT**

**ZENA SALIM AHMED (Suing as the administratrix of the estate of**

**SALIM AHMED**  
**SALEM.....RESPONDENT**

### **RULING**

By notice of Preliminary Objection dated 19<sup>th</sup> May 2010, the Respondent has applied for the striking out of the supporting affidavit of the Appellant Gachui Akothae Rengerua dated 11<sup>th</sup> May 2010.

The preliminary objection is opposed by the Appellant.

The parties' advocates presented their oral arguments before me on the 6<sup>th</sup> July 2010.

In his submissions Mr. Khatib for the Respondent urged that the jurat of the affidavit is hanging on a separate page and therefore ought to be struck out. He submitted that the affidavit is not paginated and one can not tell whether it is related to the same affidavit or not. He also submitted that since this is a fundamental defect in the affidavit that cannot be cured/ the only option is the striking out of the affidavit.

As I mentioned, the application is opposed. Mr Jumbale the learned counsel for the Appellant in opposition submitted that the preliminary objection does not disclose any point of law. He argued that there was no space for the jurat to be included in the preceding page and that if this is a defect it lies on form and not in respect of the substance.

In support he quoted Order 18 Rule 7 of the Civil Procedure Rules which states;

**“The Court may receive any affidavit sworn for purpose of being used in any suit notwithstanding any defect by misdescription of the parties or otherwise in the title or other irregularity in form thereof or on any technicality”**

In his submissions the Appellant's advocate also quoted several authorities.

In the case of **Jimco Enterprises –VS- Deposit Protection Fund & 2 Other [2006] eKLR** the court had to determine a similar issue.

The Court noted that whereas it is good practice for the jurat of the affidavit to be in the same page of the oath it is not expressly required to be so by the Oath and Statutory Declarations Act (CAP 15) Laws of Kenya.

Having considered the rival submissions on the issue, it is my determination that although the jurat of the affidavit is on a separate page the same is not fatally defective and the court has discretion to admit it as long as the defect is of form and not the substance as provided by Order 18 Rule 7 of the Civil Procedure Rules.

I concur with the holding of the Honourable Justice Fred Ochieng in the above case where he states that **“therefore the fact that the jurat is not on the same page as the text of the affidavit is, strictly not an irregularity, as there is no legal requirement that it be so”**

The upshot of the above is that the preliminary objection is dismissed with costs to the Appellant.

DATED AND SIGNED AT NAIROBI ON THIS 16<sup>TH</sup> DAY OF JULY 2012

**M.K IBRAHIM**

**JUDGE**

DATED AND DELIVERED AT MOMBASA ON THIS 24<sup>TH</sup> DAY OF JULY 2012

**R. MWONGO**

**JUDGE.**

In the presence of