



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL APPEAL 84 OF 2009**

**PETER NGURE KIMINGI.....1ST APPELLANT
ANNE WANGARI KIMINGI.....2ND APPELLANT**

VERSUS

INVESTMENT & MORGAGES BANK LTD.....RESPONDENT

R U L I N G

1. A Preliminary objection has been raised to the notice of motion dated 12th October, 2009 on the grounds that the supporting affidavit sworn by Felix Otieno on 12th October, 2009, is defective as it contravenes Order XVIII Rule 3 of the Civil Procedure Rules. The deponent of the affidavit who is a legal officer of the applicant, I & M Bank Ltd, has deponed in paragraph 11 that all the facts that he has deponed to in the affidavit are within his knowledge and are true.
2. Counsel for the respondent maintains that the affidavit is defective because the deponent has not disclosed sources of his information. However, in paragraph 7 and 8 of the affidavit, the deponent has revealed the source of his information as the applicant's advocate.
3. Thus, although paragraph 11 of the affidavit states that all the facts deponed to are facts within the deponent's knowledge, that is not actually the position. It is evident that the affidavit is defective. Accordingly the affidavit sworn by Felix Otieno is struck out.

Dated and delivered this 19th day of February, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the appellant absent

Githinji H/B for Ogunde for the respondent/applicant

Eric - Court clerk