

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI**

Misc Civil Appli 8 of 2008

FRED LWANDE T/A MARKART.....APPELLANT

VERSUS

KENYA INDUSTRIAL ESTATES LTD..... RESPONDENT

RULING

Mr. Mouko, advocate for the respondent in the application by way of Notice of Motion, dated 3rd April 2008, sought to rely on a replying affidavit sworn by himself on 29th April 2008.

It happens that two applications are on the court file in respect of the same subject matter. One, is by way of ex-parte Chamber Summons dated 22nd April 2008. Yet another by way of Notice of Motion dated 3rd April 2008.

The application by way of ex-parte Chamber Summons was withdrawn on 20th May 2008.

The application which remained for hearing is one by way of Notice of Motion dated 3rd April 2008. When Mr. Mouko rose to address the court, Mr. Okuto, counsel for the applicant, objected. He submitted that there is no grounds or replying affidavit in opposition to the application. He sought leave to proceed ex-parte therefor.

Mr. Mouko's response was that there was an affidavit by himself sworn on the 29th day of April 2008 in opposition. The situation is compounded by the fact that the affidavit does not say to which application it relates.

I have agonized over the matter. I have carefully perused the court file and find as a fact that there are grounds of opposition to the application dated 22nd April 2008 which is the one withdrawn. Accordingly, the only logical inference is that the replying affidavit of James Gekonge Mouko relates to the application dated 3rd April 2008 which is under consideration.

In my view, the application is thus opposed.

I allow Mr. Mouko to make submissions (if any) in opposition to the application herein therefore.

DATED and delivered at Malindi this 23rd day of May 2008.

N. R. O. Ombija

JUDGE