



REPUBLIC OF KENYA



**KENYA LAW**  
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**MAT International Terminal Limited v Multiple ICD (K) Limited & 4 others (Environment & Land Petition 11 of 2017) [2022] KEELC 13821 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13821 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**ENVIRONMENT & LAND PETITION 11 OF 2017**  
**NA MATHEKA, J**  
**OCTOBER 25, 2022**

**BETWEEN**

**MAT INTERNATIONAL TERMINAL LIMITED ..... PETITIONER**

**AND**

**MULTIPLE ICD (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NEMA ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. On September 27, 2022, Mr Kirina counsel for the 1<sup>st</sup> Respondent made an oral application to court to strike out the Replying Affidavit dated July 7, 2022 of Mr. Samuel Mwangi the Land Registrar Mombasa for being contradictory to the previous replying affidavit filed on July 17, 2012 by Renson Mulele Ingonga. The 1<sup>st</sup> Respondent relied on Order 2 Rule 6 of the *Civil Procedure Rules*, Rule 15-19 of the *Mutunga Rules* and the case of *St Patrick Hill School Limited v Bank of Africa Kenya Limited* (2018) eKLR.
2. In the case of *Mombasa Cement Limited v Salim Masdud Abdalla & 4 others* (2018) eKLR, Justice C.K Yano held that:-

“My view is that since both Affidavits are on record and they are statements made on oath, they both be subjected to interrogation at the main trial. I must also take cognizance of the dispute herein where the defendants are fighting on who between them are the rightful trustees of the suit property. This Court is of the firm view that dealing with any contentions raised by the parties in the Affidavits herein at this stage would be untidy and burdensome



as it would be forced to comb through the said Affidavits to establish what each party really wanted to detail to support their respective stands herein. In my view these are matters that are fit for determination at the main trial when parties will have the opportunity to subject the evidence of the other into cross-examination. The Court is of the view that it should at this interlocutory stage restrain itself from making any matter of opinion or conclusion on the merits of the matters in issue as that would be engaging in a mini trial which can hurt the fair trial of the main case on merit. As the documents in issue contain matters of evidential value, the Court ought to act very cautiously and carefully and avoid embarking on a mini-trial of the case. Doing so, I would be running the risk of making definitive and final conclusions without the advantage of hearing and seeing witnesses who have been subjected to cross-examination, the time tested device of testing the truth or falsity of evidence. See *Vivo Energy Kenya Limited –vs- Maloba Petrol Station Limited & 3 Others* (2015 eKLR).”

3. The court is of the view that the only way to resolve the contradiction between the two replying affidavits is to subject the deponents to cross examination. From the proceedings, it is clear that on February 9, 2022 the court granted parties leave to proceed by way of viva voce evidence and further directed deponents to affidavits to appear before court to adduce evidence and they be subjected to cross examination. Parties will have an opportunity to present their case before court and scrutinize the authenticity of the averments and deponents made in these contradicting affidavits. When the court retires to analyze and determine the matter in finality, it will take judicial notice of the contradictions between the affidavits and consider the weight and reliability of the same. Consequently, the application made orally by counsel for the 1<sup>st</sup> Respondent is not merited and is dismissed.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25<sup>TH</sup> DAY OF OCTOBER 2022.**

**N.A. MATHEKA**

**JUDGE**

