

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

Civil Case 28 of 2007

ALI EL-BUSAIDY..... PLAINTIFF

VERSUS

KENYA COMMERCIAL BANKDEFENDANT

RULING

At the hearing of the application by way of Chamber Summons dated 10th December 2001, pursuant to the provisions of Order XXXIX Rules 1,2 and 2A of the Civil Procedure Rules, Mr Mulwa for the applicant raised a preliminary point that replying affidavit sworn on the 7th January 2004 be struck out on the grounds that all the exhibits are not marked as required by law.

Mr Waweru for the respondent conceded that the exhibits are not marked on the face of the said affidavits. However, the markings are on separate blank pink paper at the end of each exhibit.

Rules 9 and 10 of the Oaths and Statutory Declaration Act (Cap 15) Laws of Kenya provides:

“9. All exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner, and shall be marked with serial letters of identification.

10. The forms of jurat and of identification of exhibits shall be those set out in the Third Schedule.”

Where the exhibits to an affidavit do not have form of identification of exhibits as provided for in the Third Schedule, the exhibits are defective and invalid (see COQUEST TRADIT ORBIT – VS – SPECIALISED LIGHTING SYSTEMS LTD NAIROBI (MILIMANI) HIGH COURT CIVIL CASE NO. 1251 OF 2002 (MOHAMMED IBRAHIM J on 5th August 2005)

The above indicated exhibits are not merely irregularities in form but substance. In the premises, I strikeout the affidavit of Evans O Olwali sworn on the 18th May 2007 with costs to the plaintiff.

Dated and Delivered on 21st Day of February 2007

N.R.O. OMBIJA

JUDGE