



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Suit 1011 of 2005

MUIMARA PROPERTIES LIMITED PLAINTIFF

VERSUS

- 1. ELPAS INDIKA AMAKOBE**
- 2. FRANCIS MBURU**
- 3. MESHACK OWUYA ABUKA**
- 4. CECILIA KILONZO TUMBO**
- 5. PETER KITHEKA IKAI**
- 6. MARY AGUSTA KARIMI**
- 7. JANE NANJIRA IBRAHIM
DEFENDANTS**

RULING

This Preliminary Objection is made under Order XVIII Rule 3 (1) where the defendant seeks to have the supporting affidavit, sworn by Francis Njuguna Karuiru and dated 11th August, 2005, struck out on grounds that it is defective.

Counsel for the defendant submitted that paragraphs 5, 6, 7, 13, 15, 16, 17, 18, 21 and 22 of the supporting affidavit do not disclose the source of the information relied upon and on this basis, the whole affidavit should be struck out. Counsel for the Plaintiff responded that the affidavit clearly states the grounds on which the information is relied upon.

Order XVIII Rule 3 (1) states that, "Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove; provided that interlocutory proceedings or by leave of this court, an affidavit may contain statements of information and belief showing the sources and grounds thereof".

After considering the paragraphs in contention, I am of the view that paragraph 5, 6 and 7 are valid. The facts in these paragraphs have been averred to by the Director and Company Secretary of the Plaintiff, who has knowledge of such facts.

Paragraphs 13, 15, 16, 17, 18, 21 and 22 are speculative and based on assumptions. Relying on Halsbury's Laws of England, 3rd Edition paragraph 845, my brother, Judge Msagha in the case of **Simon Isaac Ngui vs Overseas Courier Services (K) Limited** held that "Affidavits filed in the High Court must deal only with facts which the witness can prove of his own knowledge except that, in interlocutory proceeding or with leave, statements as to a deponent's information or belief are admitted, provided the sources and grounds thereof are stated ...".

Where an affidavit is made on information, it should not be acted upon by any court unless the sources of the information are specified. (**Standard Goods vs Harakehand Nathu & Company (1950) 17 EACA 99**). Similarly, in the case of **Assanand and Sons vs E. A Records Limited (1959) EA 360**, the Court of Appeal held that the deponent must distinguish between matters deponed to from his own knowledge and those from information given to him.

It is thus clear that paragraph 13, 15, 16, 17, 18, 21 and 22 of the affidavit do not conform to the requirements of Order XVIII Rule 3 (1) and are hereby struck out. Without these paragraphs, the affidavit is skeleton and does not form sufficient basis to support the Chamber Summons application before this Court.

Accordingly, the same is dismissed with costs to the Defendant/Respondent.

Dated and delivered at Nairobi this 13th day of February, 2006.

ALNASHIR VISRAM

JUDGE