



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
COMMERCIAL DIVISION MILIMANI  
Civil Case 1310 of 2001

MICHAEL JOHN BECHET .....PLAINTIFF  
VERSUS  
UAP PROVINCIAL INSURANCE CO. LTD.....DEFENDANT

RULING

This is a ruling on the plaintiff's objection to the defendant's submission that the plaintiff's affidavit filed in court on 21st September 1998 raised new cause of action contrary to the pleaded facts in the plaint.

The defendant's counsel in advancing his preliminary objection stated the plaintiff in response to the defendant's affidavit filed a further affidavit on 21st September 1998, with a new cause of action. Mr. Imandar objected to this submission on the basis that Justice Waki, as then was, ruled in this matter and found that the affidavit did not raise new cause of action.

In my ruling I find indeed that there was findings made by Justice Waki on whether the said affidavit raised new causes of action. The judge in his ruling dated 30th June 1999 found as follows: -

***“The affidavit makes no departure from the original pleadings and cause of action nor does it contradict the original affidavits in support of the main application.....suffice it to say that I do not see a departure from the original cause of action, but a further clarification of and focus on the original affidavits.....”***

That being the finding of Justice Waki the court will not allow the defendant to reopen that argument again. The defendant will proceed to argue its preliminary objection, without raising that issue, of a new cause of action being raised by the plaintiff's further affidavit, filed in court on 21st September 1998.

**Dated and delivered this 9th day of June 2005.**

**MARY KASANGO**  
**JUDGE**