



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

**DIVORCE CASE NO. 120 OF 2000**

**C R K B.....PETITIONER**

**versus**

**J B M.....RESPONDENT**

**R U L I N G**

Counsel for the respondent has raised preliminary objection to the petitioner's application which was made under section 25 & 30 of the Matrimonial Causes Act and Rules 38 & 39 of the same Act. The preliminary objections are that:

1. The affidavit sworn on 3rd July 2000 by the petitioner has not complied with section 5 of the Oaths & Statutory Declarations Act.
2. The Petition is defective as it has not complied with rule 6(1), (2) (a) of the Matrimonial Causes Rules.

Counsel was later to abandon the second objection after it was pointed out to him that the petitioner had actually filed the verifying affidavit which had also been served upon his client.

That being the case then, the issue for my determination arises out of the first preliminary point.

Section 5 of the Oaths & Statutory Declarations Act Cap 15, stipulates that:

“Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made”

The contentions affidavits do not indicate where they were taken although the commissioners address indicates that he is based in Nairobi. For that reason, counsel urges this court to find the affidavits defective and to strike out the petition.

The petitioners counsel opposed that objection and relied on the case of Unga Ltd. V Amos Kinuthia & Gabriel Mwaura t/a Budget Spray Works CA Nai, 175 of 1997 (Unr), where the Court of Appeal was called upon to dismiss an application for want of form.

The Court of Appeal had held that “it is not proper to dismiss the application for want of form, particularly when .....has not been misled in any way and has suffered no prejudice”.

It is true that the jurats do not indicate where the affidavits were sworn, but the deponent has clearly

indicated she is resident in Nairobi. They were sworn before an advocate in Nairobi. I see no prejudice that has been caused to the respondent who has filed his detailed reply and crosspetition. It is not the intention of the court to shut out the petitioner.

I agree with counsel for the petitioner, the omission can be cured by allowing the petitioner to file supplementary affidavits. Having applied for leave to do so, I grant him leave to file and serve the supplementary affidavit within the next seven days. Costs in the cause.

Dated and delivered this 12th day of March 2001.

JEANNE W. GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of:

Mr. Kamonde for the respondent/applicant  
Ms Kwengu for the respondent/petitioner.