

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1284 OF 1999

JAPAN AIRLINES COMPANY LTD. PLAINTIFF
VERSUS
DUNCAN MITCHELL DEFENDANT

RULING

On 23.11.2000, the defendant in this matter lodged an application under O. XXV Rules 1, 4, 5 and 6 of the Civil Procedure Rules for an order that the plaintiff do provide security for the whole of the costs of the defendant.

The application is supported by an affidavit sworn on 29.9.2000 by the defendant. In response to the application, the plaintiff's advocate Mr. Kiragu Kimani swore and filed a short replying affidavit in which he states that he has the conduct of the case; that he has read the defendant's application dated 23.11.2000 together with the affidavit in support thereof and adds that the plaintiff will oppose the application on grounds set out in a document entitled 'grounds of opposition' annexed to his affidavit.

The applicant's learned counsel has now raised a preliminary objection to the affidavit sworn by Mr. Kimani Kiragu and argues that the affidavit is incurably defective and ought to be struck out. The basis of that contention, as explained by Mr. Hassan is that Mr. Kiragu Kimani did not state that he had instructions from the plaintiff to swear the affidavit. That point is clearly frivolous because in my opinion, an advocate for a party to a matter has the authority throughout the entire proceedings to do all things that are necessary, including the swearing of any necessary affidavits, to defend and protect the interests of his client. He does not therefore have to repeat, whenever he takes action in a matter, that he has instructions to do this or that.

The second point argued by Mr. Hassan is that the affidavit offends O. XVIII Rule 3 of the Civil Procedure Rules in that Mr. Kiragu does not in the affidavit state what the sources of the information is and/or the grounds of his belief. Mr. Hassan did not however indicate what parts of Mr. Kiragu's affidavit contained statements of information and/or belief and consequently the issues of disclosing such source and/or grounds of such belief does not arise. That point is also frivolous. In view of what is stated above, the authorities cited by Mr. Hassan are irrelevant.

For the above reasons, the preliminary objection is overruled with costs.

Dated at Nairobi this 9th day of March, 2001.

T. MBALUTO

JUDGE