

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1098 OF 1998**

**SAKIHOLDINGSLIMITED.....PLAINTIFF
Versus
DIAMOND TRUST OF KENYA LTD.....DEFENDANT**

R U L I N G

The defendants have moved this court under Order XXXIX rules 1(a) (b) and 2 of the Civil Procedure Rule, Section 3A of the CPA and all enabling provisions of the law.

They seek several orders all relating to motor vehicle Registration Number KAE 592 D.

The plaintiffs who oppose the application have had sworn the replying affidavit by one Samson Kiama Macharia.

Mr. Jan Mohamed for the defendants took issue with the replying affidavit. It was her submission that the same, whose jurat appears on a page on its own and separate from the text is defective and should thus be disregarded by the court.

It was however, the submission of Mr. Wainaina for the plaintiff that the same was not defective. He relied on Order XVIII rule 7 which stipulates that

“The court may receive any affidavit sworn for the purpose of being used in any suit notwithstanding any defect by misdescription of the parties or otherwise in the title or other irregularity in the form thereof”

I am inclined to agree with the defence counsel, the above rule does not in any way refer to jurats. In my opinion the jurat must appear within the text of the affidavit in order to give it credence, and euthenics otherwise a situation would arise where the jurat is not related to the affidavit and hence the requirement that it appears within the text of the affidavit. The affidavit is thus incurably defective and is inadmissible. I have noted that the plaintiff had also filed its grounds of objection but I shall disregard them as they are no longer allowed under order L rule 16 which clearly stipulates that one shall only file a replying affidavit.

That being the case then, the application can only be opposed on points of law.

Dated and delivered this 25th July, 2001.

JEANNE W. GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of:

Ms Jan Mohamed & Mr. Dar for the defendant/applicant

Mr. Samson Kiama

Macharia – M. Director of Plaintiff Company present in court but his counsel not present.