

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1883 OF 2000

DIAMOND TRUST BANK KENYA LIMITED PLAINTIFF
VERSUS
BOSONGO MEDICAL CENTRE LIMITED 1ST DEFENDANT
DR. SOLOMON OMWEGA OMACHE 2ND DEFENDANT
SARA G. ANGINA OMWEGA 3RD DEFENDANT

RULING

When this matter came up for hearing, Mr. Dar for the respondent raised a preliminary point in which he argued that the replying affidavit sworn on 24.8.2001 by Dr. Solomon Omwenga Omache does not comply with Section 4(1) of the Oaths and Statutory Declaration Act in that it was commissioned by the advocate acting for the defendant. That point is however based on a misconception of the facts for it is clear from the record that as at 24.8.2001 when Mr. Mogere Advocate commissioned the affidavit, he was not yet on record as the advocate for the defendants, his appointment having been effected and notice thereof filed only on 19.9.2001.

The second point is clearly frivolous. It has never been the law that a party is not under any circumstances allowed to file more than one affidavit in support of the same application. As for the third point, I agree with Mr. Mainye for the respondent that the same has been overtaken by events. For all the above reasons, the preliminary objection is overruled with costs.

Dated at Nairobi this 26th day of October, 2001.

T. MBALUTO

JUDGE