



**Chiagra & another v KCA University & 5 others (Environment & Land
Petition E001 of 2025) [2025] KEELC 3990 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3990 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND PETITION E001 OF 2025**

**E ASATI, J
MAY 22, 2025**

BETWEEN

MATHEWS ONDIEK CHIAGRA 1ST PETITIONER

SILVANUS OWINO KOYO 2ND PETITIONER

AND

KCA UNIVERSITY 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

COUNTY GOVERNMENT OF KISUMU 3RD RESPONDENT

HOUSING, AND URBAN DEVELOPMENT 4TH RESPONDENT

DIRECTOR OF SURVEY OF KENYA 5TH RESPONDENT

ATTORNEY GENERAL 6TH RESPONDENT

RULING

1. The substantive order sought by the Respondent in the Notice of Motion application dated 16/5/2025 is that the court be pleased to grant the applicant leave to file a fresh Replying Affidavit in response to the Petitioners' application dated 4/4/2025, the previous Replying Affidavit having been struck out.
2. The application was opposed on the grounds contained in the petitioners' Statement of Grounds of Opposition dated 21/5/2025 namely; that both the Supporting Affidavit to the application and the intended Replying Affidavit are incurably defective and incompetent as they offend the mandatory provisions of Rule 9 of the Oaths and Statutory Declarations Rules, that unmarked and unsealed annexures are of no value to the application to which they relate, that the intended Replying Affidavit has not been stamped and executed by a Commissioner for Oaths in the manner contemplated in the



Third Schedule of the Oaths and Statutory Declaration Rules and that the application lacks merit as it does not meet the threshold for grant of the orders sought.

The application was urged orally on 21/5/2025.

3. I have considered the application, the grounds of opposition and the rival submissions. It is not disputed that the applicant did file a Replying Affidavit to the Petitioners' application dated 4/4/2025 which was struck out for being in contravention of the provisions of the [Oaths and Statutory Declarations Act](#). The applicant now seeks for a chance to file fresh Replying Affidavit to respond to the petitioners' application.
4. The petitioners' objection is centered around the commissioning of the Affidavits and the annexures thereto. The court has perused the Supporting Affidavit to the application and noted that the same was sworn before a Commissioner for Oaths who executed the same and sealed it with his seal. And in respect of the intended Replying Affidavit, the applicant submitted it was only a draft.
5. To enable the court to reach an outcome based on merits and evidence and to ensure substantive justice is served, the application is hereby allowed in the following terms:
 - i. The applicant is hereby granted leave to file and serve a Replying Affidavit to the petitioners' application dated 4/4/2025 within three (3) days hereof.
 - ii. Costs of the application to the petitioners.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU AND READ VIRTUALLY THIS 22ND DAY OF MAY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of: _

Maureen - Court Assistant.

Mrs Koome for the 1st Respondent.

Billy Janji for the Petitioners.

