



**Shultz v Wachira & another; Mungai (Third party) (Civil Suit
857 of 2005) [2025] KEHC 4874 (KLR) (Civ) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT 857 OF 2005

AC MRIMA, J

APRIL 24, 2025

BETWEEN

JOAN MARIE SHULTZ PLAINTIFF

AND

GEORGE MBURU WACHIRA 1ST DEFENDANT

JOSEPH NGIGE MACHAGA 2ND DEFENDANT

AND

JAMES KAMAU MUNGAI THIRD PARTY

RULING

1. This is a consolidated ruling in respect of two Notices of Motion dated 17th December 2024 and 13th November 2024 respectively; which were both taken out by the 1st Defendant/Applicant.
2. The Notice of Motion dated 13th November 2024 sought to stay execution of the judgment rendered on 18th October 2024 pending the determination of an appeal before the Court of Appeal whereas the Notice of Motion dated 17th December 2024 was an attempt to seek to enlarge time within which to deposit security in Court. The Affidavits in support of both applications were sworn by one Mercy Maweu, a Legal officer at The Kenyan Alliance Insurance Company Ltd, the insurer of the 1st Defendant's motor vehicle which was subject of the suit. The 1st Defendant also filed written submissions dated 13th February 2025.
3. The applications were opposed by the Plaintiff through a Replying Affidavit sworn by one Jennifer Catherine Ombonya, the Plaintiff's Counsel. Written submissions were also filed.



4. Before considering the merit or otherwise of the applications, there is an issue which was raised by the Plaintiff on the competency of the Affidavits in support of the applications sworn by the said Mercy Maweu. Given the nature of the issue, this Court will, in the first instance, deal with it.
5. The general legal position on swearing of Affidavits in a suit is that they ought to be limited to facts and be sworn by a party in the proceedings who has personal knowledge of and can prove them. In some instances, the law allows an Affidavit to contain statements of information and belief showing the sources and grounds thereof. It is also a cardinal requirement in law that any party who swears an Affidavit in a suit must sufficiently satisfy the Court that he/she has the necessary locus standi to do so. Of course, there are numerous instances where the law bars a person from swearing an affidavit in a matter.
6. Advocates of the High Court of Kenya representing parties in a suit are also generally barred from swearing affidavits unless the matter is not contentious and the Counsel does not stand the risk of being called as a witness or be cross-examined on the contents of the affidavit. Rule 8 of the Advocates (Practice) Rules 1966 affirms the foregoing as follows: -

No advocate may appear as such before any court or tribunal in any matter in which he has reason to believe that he may be required as a witness to give evidence, whether verbally or by declaration or affidavit; and if, while appearing in any matter, it becomes apparent that he will be required as a witness to give evidence whether verbally or by declaration or affidavit, he shall not continue to appear:

Provided that this rule does not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on formal or non-contentious matter of fact in any matter in which he acts or appears.

7. The Supreme Court of Kenya in *Odinga & 16 others v Ruto & 10 others; Law Society of Kenya & 4 others (Amicus Curiae) (Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated))* [2022] KESC 56 (KLR) (Election Petitions) (26 September 2022) (Judgment) equally reiterated the above position.
8. Returning to the affidavits in issue which were sworn by the Legal officer Mercy Maweu and by applying the legal parameters set out above, this Court finds the said Mercy Maweu did not depose to be an Advocate of the High Court of Kenya, but a legal officer employed by an insurance company. This Court is alive to the truism that there are many legal officers in insurance companies who are not Advocates of the High Court of Kenya. Further, even if Mercy Maweu was an Advocate, still the issue as to whether she was one of the Advocates in the firm of Messrs. Macharia-Mwangi & Njeru who are the Advocates on record for the 1st Defendant would naturally arise. Lastly, no basis was given as to why the 1st Defendant or his Advocate on record did not swear the affidavits. The foregoing scenarios, therefore, stripes off Mercy Maweu any locus standi in this suit.
9. Drawing from the above, the applications suffer a false start and this Court finds no need to deal with their merits. Consequently, the Notices of Motion dated 17th December 2024 and 13th November 2024 respectively are hereby struck out with costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE



Ruling virtually delivered in the presence of:

Mrs. Wachira, Learned Counsel for the Plaintiff/Respondent.

Miss. Njagi, Learned Counsel for the 1st Defendant/Applicant.

Michael/Amina – Court Assistants.

