



Matanda v Biketi (Civil Appeal E036 of 2025) [2025] KEHC 10794 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E036 OF 2025**

RK LIMO, J

JULY 24, 2025

BETWEEN

HUNNINGTON MATERE MATANDA APPELLANT

AND

VICTOR MUCHOLI BIKETI RESPONDENT

RULING

1. Before me is a Notice of Motion dated 9/7/25 brought by the appellant/applicant seeking the following prayers namely;

- i. Spent
- ii. That pending the hearing interpartes and thereafter pending the hearing and determination of the appeal, there be a stay of execution by way of arrest and commitment of the appellant in Kitale CMCC NO.E314 of 2022.
- iii. That in view of existing moratorium declared by the Statutory Manager Invesco this court be pleased to dispense with the requirement for deposit of security as a requirement for granting stay.
- iv. Any order deemed fit to grant.
- v. Costs.

The grounds are as follows;

- a. That the appellant/applicant filed an application in Kitale CMCC NO.E314 of 2022 seeking to set aside execution process against him.
- b. The trial court dismissed his application entirely.
- c. That he has now filed an appeal.



- d. That it is necessary to grant stay as the applicant risks being committed to civil jail.
2. The applicant has supported this application with an affidavit that is supposedly sworn on 9/7/25. Supposed because the same is not executed by the deponent to show that the declaration happened before a Commissioner for Oaths as required under Section 5 of *Oaths and Statutory Declaration Act*.
 3. The respondent through a replying affidavit has taken up an issue with the same stating that the application is fatally defective for want of signature of the deponent in the affidavit. He relies on the decision of *Gedion Sitelu Konbellah v Julius Lekakeny Ole Sunkuli & 2 Others* (2018)eKLR.
 4. This court finds that even without going to the merits or other issues raised in the application, this issue on a preliminary basis disposes of this matter because of the mandatory requirements under Order 51 Rule 4 *Civil Procedure Rules*. The rule provides that every Notice of Motion shall be supported by an affidavit. The application before me is not supported by a competent affidavit.
 5. The application before me is not supported by an affidavit competently sworn by the deponent cited in the application.

The application dated 9/7/25 is therefore incurably defective and is hereby struck out with costs to the respondent.

DELIVERED, DATED AND SIGNED AT KITALE THIS 24TH DAY OF JULY , 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of

M/s Chepkwony for Respondent

No appearance fo Mr Wanyonyi for the Appellant

Duke/Chemosop – Court assistants

