



**Otieno v Otieno (Civil Appeal E125 of 2024) [2024] KEHC 8539 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8539 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E125 OF 2024**

**MS SHARIFF, J**

**JULY 15, 2024**

**BETWEEN**

**WILFRED OMONDI OTIENO ..... APPELLANT**

**AND**

**STEPHEN OCHIENG OTIENO ..... RESPONDENT**

**RULING**

1. I have considered the Appellant’s notice of motion dated 19<sup>th</sup> June, 2024, the certificate of urgency issued by Valentine Ataka advocate and the supporting affidavit sworn by Millian Aligula on 21<sup>st</sup> June 2024 and I note that the application offends the provisions of Order 51 Rule 4 which provides that:

“ Every notice of motion shall state in general terms the grounds of the application and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”

2. The application herein has not disclosed the grounds upon which it is premised nor does it indicate the person on whose affidavit evidence, it is based on. Moreover the affidavit attached to the application, sworn by Millian Aligula is a future affidavit as it was sworn on 21<sup>st</sup> June 2024 and it was non existence as at the time of drawing and signing of this application.
3. In light of the reasons aforestated I find that the application herein is incurably and fatally defective where I do hereby strike it out with no orders as to costs.
4. The above orders apply mutatis mutandis to Kisumu HCCA No. E125/24.

It is hereby so ordered.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 15<sup>TH</sup> DAY OF JULY, 2024.**

**M. S. SHARIFF**



**JUDGE**

