

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO 447 OF 2019

HANNAH WANJIRU.....APPLICANT

VERSUS

GEORGE KAMAU NGOTHO.....RESPONDENT

RULING

1. The Applicant's Notice of Motion application dated and filed on 13th June 2019 was seeking extension of time to file a Memorandum of Appeal and a stay of the proceedings in **Milimani CMCC No 6331 of 2013** pending the hearing and determination of the appeal herein..
2. The said application was supported by the Affidavit of Angela Maina, the Legal Officer of Directline Assurance Company Limited who were the insurers of the Applicant's Motor Vehicle Registration Number KBL 288L. Notably, her Affidavit was undated.
3. In opposition to the said application, on 21st June 2019, the Respondent herein swore a Replying Affidavit. The same was filed on 18th July 2019.
4. The court did not go into the merits or otherwise of the application as it noted that the affidavit in support thereof was undated. This rendered the said application defective and/or incompetent *ab initio* for the reason that it failed to comply with the mandatory provisions of Section 5 of the Oaths and Statutory Declarations Act Cap 15 (Laws of Kenya).
5. The said Section 5 of the Oaths and Statutory Declarations Act provides as follows:-

“Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.”

6. The requirement for the dating of an affidavit is couched in mandatory terms. An affidavit is an oath and it must be specific as to the date it was taken. The omission to date an affidavit is therefore not a technicality that can be cured by Article 159(2)(d) of the Constitution of Kenya, 2010.

DISPOSITION

7. For the foregoing reasons, the upshot of this court's decision was that the Applicant's application dated and filed on 13th June 2019 was not merited on account of the same being incompetent *ab initio* and the same is hereby dismissed. In view of the fact that it was the court that noted the defectiveness and/or incompetency of the said application, it will not make any order as to costs.
8. It is so ordered.

DATED and DELIVERED at NAIROBI this 7th day of May 2020

J. KAMAU

JUDGE