

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Civil Appeal 20 of 2006

MALINDI MANAGEMENT STRATEGY

T/A MALINDI CASINO..... APPELLANT

VERSUS

STEPHANO SCHIAPPACASERESPONDENT

R U L I N G

A Preliminary Objection dated 10th June 2009 has been raised by the respondent regarding the replying affidavit sworn by William Mogaka on 3rd June 2009 because the annexures referred to do not comply with section 6 rule 9 of the Oaths and Statutory Declaration Act. Miss Chepkwony, on behalf of the respondent, submits that the documents are referred to as annexures. She points out that Rule 9 requires the documents to be sealed and marked with seals of identification saying only page 1 has a stamp by the Commissioner of Oaths while the other annexures bear no stamps and are not related to what is on page 1 and should have been treated separately as there are ten pages of letters which are not even a bundle, so each of those letters ought to have been marked and stamped separately. She therefore urges this court to expunge pages 2-10 of the purported annexures. She seeks to rely on **HCCC 836 of 2003 Rwama Farmers Co-operative v Thika Coffee Mills Ltd** where the judge held that annexures which are independent of each other should not be bundled together. Mr. Mogaka on behalf of respondent opposes the Preliminary Objection saying the decided case cited is misconstrued as the learned Judge did not say that the letters from different advocates cannot form a bundle - that the judge merely found that certain letters referred to had not been annexed and that some of the annexures did not form one bundle but were independent of each other. It is his argument that the Act does not state that documents cannot be produced as one bundle and in the present case, there is only one exhibit produced in a bundle – which has been serialized. He explains that serialization merely means paginating or numbering and the respondent has complied with the provisions of the Act as the first page of that whole bundle is stamped and sealed properly and the whole bundle is simply one exhibit.

He argues that there is nothing fatal in referring to the documents as annexures as paragraph 5, clearly states they are exhibits.

Rule 9 provides as follows:-

“All exhibits to affidavits shall be securely sealed thereto under the seal of the Commissioner and shall be marked with serial letters of identification.”

What I must consider is whether there is a relationship between the documents which form the bundle or whether each is distinct and separate and so should be marked separately.

There is a photocopy of the application together with the supporting affidavit marked WM1 – these are

not independent of each other and in fact form part of that application, the supporting affidavit forming part of WM1 in fact seeks to buttress what is contained in the application and is properly placed as one bundle of exhibits.

Then there is the replying affidavit by the respondent and grounds of opposition collectively marked WM2 – these are the respondent’s response to the application and form one genre and are properly marked WM2 as a bundle. A copy of the contested court order is marked WM3. I don’t think it is necessary to stamp on each page and seal and mark them separately – the intention of that provision was so as to avoid clustering of too many documents as to cause confusion and a disconnect. That is not the case here. The preliminary objection in my view – has no merit and is dismissed with costs to the respondent.

Delivered and dated this 3rd day of **November 2009** at Malindi.

H. A. Omondi

JUDGE

Read in absence of parties