



REPUBLIC OF KENYA



KENYA LAW
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**Copycate Enterprises Ltd v Embu County Government (Commercial Case
E001 of 2025) [2025] KEHC 13652 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
COMMERCIAL CASE E001 OF 2025
RM MWONGO, J
OCTOBER 1, 2025**

BETWEEN

COPYCATE ENTERPRISES LTD PLAINTIFF

AND

EMBU COUNTY GOVERNMENT DEFENDANT

RULING

The Preliminary Objection

1. The defendant/respondent filed a preliminary objection dated 24th April 2025 on grounds that:
 1. Patrick Gitau Matindi, the person swearing the verifying affidavit in respect of the pleadings dated 18th March 2025 together with the supporting affidavit in the application dated 14th April 2025 has not proved his authorisation to swear the documents;
 2. In this matter, the plaintiff has offended Order 4 Rule 1 of the Civil Procedure Rules; and
 3. The matter needs to be dismissed with costs.

Background

2. The plaintiff/applicant filed a plaint dated 18th March 2025 seeking judgment against the defendant for a liquidated sum of Kshs.20,300,000/= with interest and costs. The verifying affidavit is sworn by Patrick Gitau Matindi who stated that he was a director in the plaintiff company. The same person also swore the supporting affidavit to the plaintiff's notice of motion dated 04th April 2025 in the same capacity.



Submissions on the Preliminary Objection

3. As directed by the Court, the parties canvassed the preliminary objection by way of written submissions.
4. The defendant/respondent submitted that the plaint is defective in law since the verifying affidavit is sworn by someone whose competence has not been demonstrated. It relied on Order 4 Rule 1(4) of the Civil Procedure Rules and argued that the claim was invalid. Further reliance was placed on the cases of Spire Bank Limited v Land Registrar & 2 others [2019] KECA 530 (KLR) and Trade Bank Limited (In Liquidation) v L.Z. Engineering Construction Limited & 2 Others (1997) eKLR. It argued that the suit was not authorised by the plaintiff and so it should be dismissed.
5. On its part, the plaintiff/applicant submitted that the mere failure to comply with Order 4 Rule 1(4) of the Civil Procedure Rules is not sufficient ground to defeat a claim. That non-compliance to rules of procedure does not amount to a question of law through a preliminary objection. It also relied on the case of Spire Bank Limited v Land Registrar & 2 others (supra) where the court held that this is not sufficient ground to defeat a case.
6. The plaintiff placed further reliance on the cases of Diesel Inject Services v Shajand Holdings Ltd [2024] KEHC 4902 (KLR), Interactive Advertising Limited & another v Equity Bank Limited [2014] KEHC 852 (KLR), Leo Investments Limited v Trident Insurance Company Limited [2014] KEHC 8664 (KLR) and Eye Company (K) Limited v Erastus Rotich t/a Vision Express [2021] KEHC 4556 (KLR). It stated that the defendant/respondent had not demonstrated that the said director was not authorised to swear the affidavits on behalf of the plaintiff/applicant.

Issue for Determination

7. The only issue for determination is whether the preliminary objection has merit.

Analysis and Determination

8. The merit or otherwise of a preliminary objection is determined by considering the nature of issues raised therein. It is trite that a preliminary objection is raised based purely on legal issues. Additionally, the determination of those legal issues should have the overall effect of determining the primary suit of the preliminary objection. In the locus classicus case on preliminary objections namely, Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 at page 700 the Court of Appeal stated as follows:

“...So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises out of clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit....A preliminary objection is in the nature of a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.”

9. The issue raised though the objection is that the verifying affidavit to the plaint and supporting affidavit to the application by the plaintiff/applicant are both sworn by an individual whose authority has not been established. In both affidavits, Patrick Gitau Matindi has introduced himself as a director in the



plaintiff and stated that he is authorised to swear on its behalf. Order 4 Rule 1(4) of the Civil Procedure rules provides thus:

“(4) Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.”

10. The defendant/respondent has urged the court to be guided by the Court of Appeal in its decision in the case of *Spire Bank Limited v Land Registrar & 2 others* (supra). Looking at that case, an identical issue arose before the High Court and the Judge allowed the preliminary objection. On second appeal, the court of appeal overturned the findings of the High Court and urged the company director to provide authorisation. The court stated as follows:

“It is clear from the provision, which is stated in mandatory terms, that for a company to file suit, there must be a verifying affidavit sworn by an officer of the company stipulating that he or she is duly authorized under the company’s seal to verify the affidavit in respect of the suit. Such person would of necessity require to be authorized by a resolution of the Board of Directors or the members under seal of the company, in order for the suit to be instituted.

Clarifying the position on the question of authorization in the case of *Makupa Transit Shade Limited & Another vs Kenya Ports Authority & Another* [2015] eKLR this Court stated thus;

“In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorized by it. It was therefore sufficient for the deponents to state that “they were duly authorized.” It was then up to the appellants to demonstrate by evidence that they were not so authorized.”

So that it was sufficient for the authorized person to depone that he or she was duly authorized, but in the event of a complaint that such person was unauthorized, it was up to the disputing party to demonstrate with evidence that the deponent did not have the requisite authority, the onus being on the party making the allegation to prove it. A bare statement that the plaintiff or applicant was not authorized would not be sufficient.”

11. Through the objection, the defendant/respondent has not demonstrated that the said official was not duly authorised to swear on behalf of the plaintiff. A reading of Order 4 Rule 1(4) of the Civil Procedure Rules does not make it mandatory that the relevant authorisation be produced to accompany the affidavits although it would be a good addition for good measure for the company to provide it. In the circumstances herein, this is not a sufficient ground for dismissal of the suit in totality.
12. In any event, in the pendency of the court’s determination of the preliminary objection, the plaintiff/applicant went on to file a supplementary list of documents including a special resolution and the company’s CR12 showing Patrick Gitau Matindi as one of it’s directors.

Disposition

13. In the result, the preliminary objection has no merit and it is hereby dismissed with costs.
14. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 1ST DAY OF OCTOBER, 2025.

R. MWONGO



JUDGE

Delivered in the presence of:

Githui for Plaintiff/Applicant

Mogaka with Ms. Kinyua for County Government

Francis Munyao - Court Assistant

