



REPUBLIC OF KENYA



**KENYA LAW**  
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**Simba v Tulu (Civil Case E015 of 2024)  
[2025] KEHC 14130 (KLR) (Civ) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14130 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E015 OF 2024**

**NW SIFUNA, J**

**OCTOBER 8, 2025**

**BETWEEN**

**JOHN ORLANDO SIMBA ..... PLAINTIFF**

**AND**

**ALFRED OMONDI TULU ..... DEFENDANT**

**RULING**

1. The Defendant filed an Application (a Motion dated 29<sup>th</sup> January 2024), seeking the striking out of this suit. The Application which is supported by the Defendant's Supporting Affidavit, is principally based on the ground that there are defects in the Plaintiff's Verifying Affidavit that accompanied the Plaintiff.
2. The Defendant in Motion stated that the said Affidavit is undated, uncommissioned, unsigned, and not executed in accordance with Section 5 of the *Oaths and Statutory Declarations Act* (Cap 15 Laws of Kenya). The other ground is that the Defendant has never been served with summons to enter appearance; hence that this suit has abated.
3. The Plaintiff opposed the Application through his Response filed herein. Thereafter the Application was proceeded with by way of written submissions. With each party filing its submissions. With the Defendant urging that the said Verifying Affidavit be struck out together with the Plaintiff, and the entire suit.
4. The Plaintiff for his part has urged that those are procedural technicalities and implored the Court to spare the suit. He has relied on Article 159(2) of the Kenya Constitution, and the Supreme Court's Ruling in *Raila Odinga v. The Independent Electoral and Boundaries Commission & Others*.



## **Analysis and Determination**

5. I have considered the rival submissions of both parties. I have also personally perused impugned Verifying Affidavit. I agree with the Defendant that the Affidavit has not complied with the requirements in the *Oaths and Statutory Declarations Act*. It is therefore a defective Affidavit. What I now need to determine, are the consequences for those defects and non-conformities.
6. The purpose of a court of law, is to dispense justice. Where a party is in error or at fault, the court will in the interest of justice consider whether or not to avoid drastic and dire consequences. Especially where the error or fault can be cured by an amendment of the pleadings, directions on the proper procedure, or leave to file a compliant pleading.
7. Where the other party has suffered or is likely to suffer prejudice as a result of that error or fault, the court will consider whether that prejudice can be compensated by an award of costs. Indeed costs are a cure for many litigation's errors, faults and goofs.
8. I am of the view that defects in a Verifying Affidavit cannot invalidate the suit itself; and invalidating the Verifying Affidavit with a focus to invalidating the suit itself, can be oppressive. Even with the defects in the Verifying Affidavit, I find that this is a proper case for exercising my discretion in the interest of substantive justice and spare this suit from the axe so that it may proceed to trial and be determined on its merits.
9. For those reasons, I hereby strike out the Verifying Affidavit on record; but grant to the Plaintiff, leave to file a compliant one. Afterall, as I have already stated in this ruling, the mere fact that a Verifying Affidavit is defective, does not render the entire suit defective. In any case the Defendant has in this Application only attacked the Verifying Affidavit, and not the Plaintiff.
10. The Defendant's Application therefore fails and is hereby dismissed. But he is awarded the costs of the Application for reason of his partial success on the Application. i.e. on the striking out of the said Affidavit. The costs are hereby assessed at Ksh 10,000=.
11. As to Summons, I direct that fresh summons be issued and served within 14 days from the date of this ruling.
12. The Plaintiff is further directed to within seven (7) days from the date of this ruling, pay the said costs as well as file the new Verifying Affidavit.
13. It is so ordered.

**DATED AND DELIVERED AT NAIROBI ON THIS 8<sup>TH</sup> DAY OF OCTOBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

