



**Ataka & another v Media Max Networks Ltd t/a K24 Television & 3 others (Civil Case 276, 277 & 278 of 2014 (Consolidated)) [2025] KEHC 14929 (KLR) (Civ) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14929 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL CASE 276, 277 & 278 OF 2014 (CONSOLIDATED)  
JN MULWA, J  
OCTOBER 23, 2025**

**BETWEEN**

**GRACE SHIKUKU ATAKA ..... PLAINTIFF**

**AND**

**MEDIA MAX NETWORKS LTD T/A K24 TELEVISION ..... 1<sup>ST</sup> DEFENDANT**

**RUTH MULANDI ..... 2<sup>ND</sup> DEFENDANT**

**HELLEN KIMARU ..... 3<sup>RD</sup> DEFENDANT**

**AS CONSOLIDATED WITH  
CIVIL CASE 277 OF 2014**

**BETWEEN**

**ELIZABETH MUGANYA ..... PLAINTIFF**

**AND**

**HELLEN KIMARU ..... 1<sup>ST</sup> DEFENDANT**

**MEDIA MAX NETWORKS LTD T/A K24 TELEVISION ..... 2<sup>ND</sup> DEFENDANT**

**AS CONSOLIDATED WITH  
CIVIL CASE 278 OF 2014**

**BETWEEN**

**ELIZABETH MUGANYA ..... PLAINTIFF**



**AND**

**RUTH MULANDI ..... 1<sup>ST</sup> DEFENDANT**  
**MEDIA MAX NETWORKS LTD T/A K24 TELEVISION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. For determination is the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants objection raised in open Court on 03/04/2025, and the Plaintiff's motion in HCCC No. 276 of 2014 dated 13/06/2025.
2. The events leading hereto are as follows:

By way of complaints dated 09/09/2025, Grace Shikuku Ataka – Plaintiff in HCCC No. 276 of 2024 and Elizabeth Muganya – Plaintiff in HCCC No. 277 & 278 of 2024 (hereafter the respective Plaintiff) filed suit founded on the tort of defamation, as against Mediamax Networks Ltd t/a K24 Television, Ruth Mulandi and Hellen Kimaru (hereafter the Defendants) seeking general, exemplary & aggravated damages as against the Defendants on the premise of the tort of defamation.
3. In response, the Defendants filed a statement of defence to the respective Plaintiffs suits denying the key averments alleged and or that he said publication was defamatory of the Plaintiffs.
4. Notably, in 2015, HCCC No. 276, 277 & 278 of 2024 were consolidated with HCCC No. 276 of 2024 being selected as the lead file and or test suit on the question of liability.
5. On 03/04/2025, Grace Shikuku Ataka took the stand and rendered her evidence in chief. On cross-examination, counsel for the Defendants raised an objection to have the latter's witness statement and verifying affidavit in support of the plaint in HCCC No. 276 of 2014, struck out. The premise of the Defendant's counsel's objection was that on the backdrop of Grace Shikuku's evidence -; that she does not know how to write and that fact that she did not know what was written in her written statement filed alongside her pleadings. The Defendant's counsel further took issue with Grace Shikuku's verifying affidavit on the ground that despite her evidence, she attested to the same using her thumbprint, yet the affidavit in Court was attested to by way of her name instead.
6. The Plaintiff's counsel on his part took issue with Defendant's counsel's objection by arguing that striking out of pleadings is a draconian measure meanwhile sought leave of this Court to file a motion to rectify the aforestated anomalies. This Court accorded the Plaintiff's counsel leave to file and serve its intended motion within fourteen (14) days of 03/04/2025 with the matter being scheduled for compliance on 19/06/2025.
7. On 16/6/2025 only the Defendant's counsel was in attendance, who proceeded to address the Court by stating that the Plaintiff's motion was not filed as directed by this Court on 03/04/2025 and thus sought for dismissal of the suit. This Court reserved a ruling date on the objection for 23/10/2025.
8. On 19/06/2025, Grace Shikuku filed a motion dated 13/06/2025 seeking among other prayers that she be granted leave to file and serve a fresh verifying affidavit, authenticated by her thumbprint in support of the Plaint filed in HCCC No. 276 of 2014 as consolidated with HCCC No. 277 & 278 of 2014; and that the Court be pleased to authorize her to file new bundle of documents incorporating the replaced documents without altering the records new bundle. When the latter motion came up for hearing on 07/07/2025, this Court directed that parties file submissions within seven (7) days towards



disposal of the Defendant's motion with the said directions to be served upon the Plaintiff's counsel within two (2) days of the said directions.

9. Thereafter, this Court slated the matter to confirm compliance on 22/07/2025. On 22/7/2025, only the Plaintiffs' counsel was in attendance and confirmed filing of submissions. This Court thus retained the matter for ruling as earlier reserved for 23/10/2025.
10. Why have I taken the strenuous liberty of setting out the events leading hereto as can be garnered from the record before me?.....It must be remembered that at the outset directions were issued by this Court on filing of the Plaintiffs' motion and later service of directions upon the Defendant.
11. Here, I cannot stress the importance of complying with Court directions in sustenance of disposal of matters before a Court, as decisions on the same are replete. That said, I draw guidance from decision in *Okoit & 3 others v Cabinet Secretary for the National Treasury and Planning & 10 others* [2023] KESC 69 (KLR) wherein it was pithily put that-;

“Taking all the above matters into account, we must state that this court has on several instances underscored the importance of compliance with its orders, rules and practice directions. With regard to filing and service of documents within the requisite time, the court has in a long line of decisions stressed that it will not countenance breaches of timelines set by the rules or by the court, and affirmed the general constitutional principle that justice shall not be delayed. See *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others*, SC Petition No 5 of 2016; [2018] eKLR and *Kenya Railways Corporation & 2 others v Okoit & 3 others*, SC Petition (Application) No 13 of 2020 & Petition 18 of 2020 (Consolidated); [2022] KESC 68 (KLR). It goes without saying that compliance with court orders goes to the root of the rule of law as well as the dignity of any court.” [emphasis mine]

12. As earlier captured, this Court on 03/04/2025 had directed the Plaintiff to file and serve its intended motion within fourteen (14) days of the said directions. Simply put, the same ought to have been filed on or before 17/04/2025. Notably, as at 19/06/2025 when the matter came up, the intended application had yet to be filed by the Plaintiff, to wit, counsel appearing for the Defendants brought it to the attention of the Court. And consequently, I proceeded to reserve a ruling date on the Defendants objection, for 23/10/2025.
13. It is only until 19/06/2025, that the Plaintiff moved to file its motion whereafter on 07/07/2025 this Court directed that the said motion be disposed of by way of submissions and the directions thereof be served upon the Defendants with the matter thus being slated for compliance purposes on 22/07/2025. A review of the record before me and Case Tracking System (CTS), there is no evidence that the latter directions were served upon the Defendants and or their counsel, to wit, in all probability the Defendants may not be aware of Grace Shikuku's motion in light of this Court's earlier proceedings of 19/06/2025.
14. In totality of the above, no leave was sought to file the Plaintiff motion out of time, despite the initial ample time having been accorded to the Plaintiff. By filing the said motion outside the timelines of this Court directions and failing to evince proof of service of the directions of this Court, only serves to visit prejudice as against the Defendants. Had the Plaintiff intended to move the Court as intimated, she ought to have done so promptly. As is, the motion as filed by Grace Shikuku is in contravention of this Court's directions, guilty of laches, with no explanation being afforded for the said delay, inadvertent or otherwise. Thus, it would be prejudicial and an affront to the administration of justice to entertain the Plaintiff's motion dated 13/06/2025.



15. The same is accordingly struck out.

As to whether I ought to strike out the verifying affidavit for want of competency?

16. The question concerning the verifying affidavit touches on the competency of the suit and or locus standi. By her own evidence in cross-examination, Grace Shikuku told the Court that she attested to the verifying affidavit using her thumbprint yet the verifying affidavit on record was attested to using her name. That said, such discrepancy goes to the root of the suit, to wit, if no explanation is offered and or rectification done renders the suit incompetent. Nevertheless, it is well-trodden that the striking out of pleadings is a draconian act that ought to be exercised sparingly.

17. Adjunct to the above, the purpose a verifying affidavit was succinctly addressed in *Josephat Kipchirchir Sigilai v Gotab Sanik Enterprises Ltd & 4 others* [2007] KECA 369 (KLR) wherein the court observed that;

“O.VII rule 1(2), aforesaid, prima facie appears to be a simple rule, but its interpretation has not been without difficulties, more so with regard to its purport. It was introduced in the Civil Procedure Rules by Legal Notice No.36 of 2000. But unlike amendments to statutory provisions, no memorandum of objects was included to give some inkling as to the mischief the introduction of the sub-rule was intended to cure. In *Microsoft Corporation v. Mitsumi Computer Garage Ltd & Another Milimani Commercial Courts (Nairobi) No.810 of 2001 Ringera J.* (as he then was) in his attempt to discern or discover the mischief the rule was intended to cure, quoted with approval the words of Juma J. on the amendment carried in a publication called *Hakimu*, in which that Judge rendered himself thus:

“The object of the amendments like any other amendments is to streamline the existing rules with the hope of improving civil justice in our courts...

It is not uncommon these days to find that a plaintiff is represented by different firms of advocates. This arises as a result of ambulance chasing. To try and put a stop to this kind of conduct Order VII was amended by adding a new sub rule (2). This sub-rule provides that the plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments in the plaint. The affidavit is to be sworn by the plaintiff NOT his advocate. It is hoped that the plaintiff will therefore, instruct one advocate as he or she will be required to swear an affidavit. I need not emphasize the consequences of filing a false affidavit.”

The aforesaid statement is clearly not exhaustive as to the mischief the amendment was intended to cure. That could be so, if we were to confine ourselves to Order VII. Rule 1(1) (e) which provides that a verifying affidavit shall contain an averment that there is no other suit pending and that there have been no previous proceedings in any court between the plaintiff and the defendant over the same subject matter. The statement does not, however, cover the added sub-rule 1 (2), which provides:

“The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in the plaint.”

The sub-rule requires that every averment in the plaint be verified. The meaning of the term “Verified” has been the source of debate. Ringera J, (as he then was) held in the case of *Galeb Gulam & Another v. Cyrus Shakhalaga Kwah Jirongo NAI HCCC No. 393 of 2003*, that a verifying affidavit should be confined to matters which the plaintiff can depose from his



own knowledge to be correct. It must be clear from the affidavit itself that the plaintiff is deposing from his own knowledge or not at all.

Mohammed Ibrahim J. in Harpreet Singh Lotay vs. Starlit Insurance Brokers Ltd; Milimani Commercial Courts Civil Case No.1072 of 2000 was of the view that “verify” as used in Order VII rule 1 (2) means confirm the correctness. In his view the purpose of a verifying affidavit is to prevent litigants from bringing frivolous or vexatious suits when they do not believe in the truthfulness of their causes of action and are motivated by ulterior motives, for instance, speculation, intimidation, harassment, nuisance, annoyance or other such motive.....

But why did the rules making authority consider an affidavit to be essential to accompany a plaint? An affidavit, as a general rule, is evidence. It would appear to us that the affidavit is intended to make the plaintiff own every averment in his plaint. It was intended to change the averments in the plaint from being mere averments or pleadings into evidence as is true in other modes of instituting suits and to pin down the plaintiff to them and thus make them part of evidence in support of his case; and possibly to limit room for maneuver.....

In view of the foregoing, it would appear to us that the Rules Committee by promulgating O.VII rule 1 (2) of the Rules, intended that in all suits commenced in Kenya, a uniform approach should be adopted and like in England, from where we think the provision was borrowed, to prevent a plaintiff from evasive and obscure pleadings and to prevent a multiplicity of suits on the same cause of action. It is however, quite clear that the Rules Committee did not go far enough as there was no reciprocal requirement for statements of defence and counterclaims. As the position is presently a defendant has no legal obligation to be specific in his answer to a claim against him. Nor is there any clear guidance on the approach to be adopted should a plaintiff require to amend his plaint. As we stated earlier a verification affidavit has the effect of making the averments in the plaint become evidential in nature. If one were to swear falsely in that regard he or she will be liable to criminal sanctions under section 114 of the Penal Code and possibly under the *Oaths and Statutory Declarations Act* Cap 15 Laws of Kenya. For this and other reasons O.VII rule 1 (2), aforesaid, raises fundamental and monumental issues, and we suggest that it should be looked at afresh.” (sic)

18. My understanding of the latter decision is that while the purport of a verifying affidavit is couched in mandatory terms, striking out pleadings is discretionary in nature whereas a defect to the verifying affidavit is and would be curable. However, in the instant matter, Grace Shikuku indubitably failed to take up the said opportunity despite the same being accorded to her. Therefore, without belaboring more on the matter I proceed to uphold the Defendants objection concerning the verifying affidavit. In the circumstance it would be moot to address the objection concerning the witness statement in light of this Court’s earlier findings.
19. In the end, this suit, HCCC No. 276 of 2014 is struck out for want of a competent verifying affidavit.
20. These consolidated cases shall be listed for mention for further directions on their hearing on 11/11/2025.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**JANET MULWA**

**JUDGE**

