

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. E188 OF 2025

ROSE MUMBI MIMANO.....
PLAINTIFF

VERSUS

IAN MBUTHIA
MIMANO.....DEFENDANT

RULING

- 1.** There are two applications before the court for determination **dated 18/07/2025** brought by the Plaintiff and the other **dated 31/07/2025** brought by the Defendant.
Parties agreed that the **application dated 31/07/2025** be heard and determined first.
- 2.** The **Motion dated 31/07/2025** is brought by the Defendant in this suit, Ian Mbuthia Mimano under **Order 19 Rule 1, 2 and 9 of the Civil Procedure Rules (CPR)**.
- 3.** The Defendant seeks several orders:-
 - 1) Spent*
 - 2) Leave of court to cross examine the Plaintiff on the averments made in the Supporting Affidavit sworn on 18/07/2025; and*
 - 3) Leave of court to cross examine Waithira P. Muthoni Advocate and Commissioner of Oaths; and*

4) *Setting aside and/or variation of court orders issued on 21/07/2025 and*

5) *The court to issue any other order as it may deem just and fit to grant in the interest of justice.*

Motion dated 18/07/2025

4. Briefly the basis of the motion and the suit is that by the **plaint dated 18/07/2025** the Plaintiff being the biological mother of the Defendant claimed that a forged General Power of Attorney dated 4/06/2025, allegedly donated by the Plaintiff, which has unlimited powers to manage, dispose, lease, alienate her properties, access her bank accounts locally and abroad, was forged.
5. Upon such claims, the **Application dated 18/07/2025** was filed seeking temporary injunction orders restraining the Defendant (Plaintiff's son) from executing the purportedly fraudulent Power of Attorney pending hearing and determination of the application inter partes.
6. Based on the supporting affidavit to the **motion dated 18/07/2025**, under a certificate of urgency, this court issued orders on 21/07/2025 granting prayer No. 2, thus restraining the Applicant (Plaintiff) from executing the purported General Power of Attorney dated 4/06/2025 determination of the motion inter partes.

7. The Respondent/Defendant opposes the motion positing that the Plaintiffs daughter namely Charlotte and granddaughter (Keyla) tragically passed away in the USA in early 2025 and the Defendant was appointed by the family to process burial arrangements and was appointed and executed a general Power of Attorney in the USA granting him full legal authority to arrange the burial of his sister and niece (exhibit IMM -2).
8. It is a further deposition that the reason for the orders sought in the Plaintiffs supporting affidavit annexed to the **motion dated 18/07/2025** does not comply with mandatory provisions under **Section 5 of the Oaths and Statutory Declaration Act**, that she did not appear before the commissioner of Oaths namely Waithira P. Muthoni to swear the impugned affidavit, that her signature was forged, that the said affidavit encompasses fraud, mala fides, contradictions and non-material disclosures and is inadmissible in evidence.
9. For the said allegations, the Defendant seeks an order to cross-examine the Commissioner of Oaths as to whether the Deponent/Plaintiff indeed appeared before her, stating that the orders are necessary to arrest the alleged fraudulent dealings and inconsistencies and falsehoods placed before the court.

Annexed to the supporting affidavit are the General Power of Attorney “IMM2” affidavit of Ian Mbuthia Mimano (IMM-3a) and a thread of relevant communication and marked (M-1).

10. On 17/09/2025 parties were directed to file submissions and exchange within 14 days. As at 15/12/2025, none of the parties had filed. The ruling is prepared without the parties submissions.

Analysis and Determination

11. The two applications are interrelated, hence will be determined simultaneously. **Order 19 of the CPR** provides for the mode of preparing and attestation of affidavits.

Order 19 Rule 2 grants the court power to order attendance of deponents of affidavits to be cross-examined in court as to their depositions on the subject matters and more particularly on their statement of information and belief showing the sources and grounds thereof.

12. A party challenging the credibility and accuracy of information contained in an affidavit if doubtful or as alleged in this matter may be granted leave to do so as held in the case of **Kwacha Communications Ltd and Hampshire Court Ltd v. Pindoria Holdings Ltd and Kwacha Group of Companies [2022] KEHC 734 (KLR)**.

13. It is however a matter of court’s discretion and should be on exceptional circumstances when justified especially where

allegations of matters touching on fraud, mala fides, authenticity of the facts deponed to, bad motives among others are alleged; as held in the court in the case of **G.G. R. V H-Ps [2012]eKLR.**

14. I have considered that the Applicant/Defendant in the Application under review and more particularly the deponent of the supporting affidavit raises issues of forgery, mala fides on the part of the Plaintiff arguing that the Power of Attorney was a forgery, whereof the Plaintiff purported to appoint Ian Mimano/Defendant as her lawful Attorney to act in her name, place and in any way could do in respect of her legal affairs, financial management, real properties of personal nature including tax matters.

15. It is therefore within this courts powers to allow the Defendant's application dated 31/07/2025 to facilitate interrogation on the alleged forged power of attorney held by the Defendant dated 4/06/2025 as well as to test its authenticity.

Consequently, **I proceed to grant prayer No. 2 and 3 of the Application dated 31/07/2025.**

16. It is only after the Plaintiff and Waithira P. Muthoni Advocate have been cross-examined and ruling made that **prayer No. 4 and 5** shall be determined.

In the meantime, the interim temporary injunctive orders issued by this court on 21/07/2025 in the motion dated 18/07/2025 shall remain in force to await execution and result of the prayers allowed in the motion dated 31/07/2025.

17. The court also finds that this is a matter that ought to have been filed and heard before the Chief Magistrates Court.

I therefore, suo motto order that the case be forthwith transferred for further action, including execution of the orders this court has issued today, to the Chief magistrates court at Milimani.

Orders accordingly.

Delivered Dated and Signed at Nairobi this 26th day of February, 2026.

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JANET MULWA.
JUDGE