



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**E & L APPEAL NO. 6 OF 2014**

**EDWIN K. TOO.....APPELLANT**

**VERSUS**

**PAUL K. SITIENEL.....RESPONDENT**

**RULING**

Before me is the application dated 27.7.2017 which is not signed. It is supported by the affidavit of Edwin Kimeli Too, for its worth, as it is not commissioned. Section 5 of Oaths and Statutory Declaration Act Cap 15 provides as follows-

*“Every Commissioner for Oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.”*

In the case **REGINA MUNYIVA NTHENGE -VS- KENYA COMMERCIAL BANK LTD (2005) eKLR**, the Court stated-

*“The second issue raised by the Applicant is that the application should be treated as unopposed because the replying affidavit is defective since it is not properly commissioned. Section 5 of the Oaths and Statutory Declaration Act provides that-*

*“Every Commissioner for Oaths before whom any oath or affidavit is taken or made ... shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made in the jurat.”*

*“The affidavit is shown as having been sworn at Machakos in the presence of Leah Mbutia Commissioner of Oaths on 13<sup>th</sup> October 2003 but whose stamp reads Nairobi. If the affidavit was sworn at Machakos, it should have been before a Commissioner for Oaths in Machakos and the stamp should show likewise. The only conclusion one can reach on looking at this affidavit is that the place the affidavit was sworn and where it was commissioned are two different places. That is irregular and unacceptable and that affidavit is, therefore, fatally defective as it was not sworn in the presence of a Commissioner for Oaths. It is likely that stamp was just affixed. This Court would have no alternative but strike off the replying affidavit as it is not properly commissioned and that means that the application would stand unopposed.”*

The application herein is not signed and the supporting affidavit is not stamped. For the above reasons alone, the application is incompetent and a non-starter and ought to be struck out. I do find that there is nothing before the court for determination. The application is struck out with costs.

**Dated and delivered at Eldoret this 29<sup>th</sup> day of June, 2018.**

**OMBWAYO**

**JUDGE**