



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**

**MISC APPLICATION NO.36 OF 2015**

**1. FRANCIS WAIGANJO KIMANGA**

**2. LUCY WANJIRU KIMANGA .....APPLICANTS**

**RULING**

1. The application for determination is the amended ex-parte Notice of Motion dated 5<sup>th</sup> August 2016. It is brought under the provisions of section 13 of the Environment and Land Court Act, Sections 1A, 1 B, 3, 3A, 63 (c) and (e) of Civil Procedure Act and Order 51 of the Civil Procedure Rules 2010 and all enabling provisions of the law.

The application is grounded on several grounds listed on the face of the application and the amended supporting affidavit of Francis Waiganjo Kimanga sworn on 5<sup>th</sup> August 2016. The said amended supporting affidavit is unsigned. Without going into the merits or demerits of the application, it is clear that the said amended supporting affidavit contains facts that are meant to support the application. As I see it, it is only a signed affidavit that can properly convey facts. An affidavit that is not signed is not authenticated and is invalid and incapable of verifying the accompanying statements of facts. It is the view of the court that allowing the applicant to proceed on the basis of a defective affidavit which is unsigned would be improper.

It is also the view of this court that the defect may in the circumstances not be curable by amendment. Relying on an unsigned affidavit, in my view renders the application bare and incompetent and therefore suitable for striking out. As I see it, the applicant's only option is to file a fresh application. The application as currently presented is defective and is hereby struck out.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 11<sup>TH</sup> APRIL 2017**

**C. YANO**

**JUDGE**

In the presence of: