



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO 192 OF 2014**

**RUPET ODERA OCHIENG.....CLAIMANT**

**VS**

**FAIRVIEW HOTEL LTD.....RESPONDENT**

**RULING**

1. The Respondent's application brought by way of Notice of Motion dated 24<sup>th</sup> March 2014 seeks orders for striking out of the Claimant's claim on the ground that the verifying affidavit sworn by the Claimant on 8<sup>th</sup> November 2013 purports to verify the averments of a non-existent plaint since the Statement of Claim is dated 10<sup>th</sup> February 2014, after the date of deponement.

2. The Claimant filed grounds of opposition and a replying affidavit on 3<sup>rd</sup> July 2014 stating that the orders sought by the Respondent are draconian and that the error in the pleadings is curable by amendment.

3. Rule 5(1) of the Industrial Court (Procedure) Rules, 2010 provides as follows:

1. ***A statement of claim filed under rule 4 shall be accompanied by an affidavit verifying the facts relied on.***

4. It is not in contest that the Claimant's pleadings carry an error in that the verifying affidavit predates the statement of claim. In the replying affidavit sworn by the Claimant on 1<sup>st</sup> July 2014, he explains that he read and verified the averments in the Statement of Claim on 8<sup>th</sup> November 2013 but was unable to raise the filing fees until 10<sup>th</sup> February 2014, the date appearing on the Statement of Claim.

5. The Court finds this explanation reasonable. Moreover under Article 159(1)(d) of the Constitution, the Court is required to administer justice without undue regard to technicalities. I have therefore elected to save the Claimant's claim and grant him leave to file a further verifying affidavit within the next fourteen days from the date of this ruling. The result is that the Respondent's application is dismissed.

6. The costs of this application will be in the cause.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER 2014**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Kenyatta for the Claimant

Mr. Obunde for the Respondent