

REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 520 OF 2011

PETER WANJOHI

MUTHEE.....
.....CLAIMANT

VERSUS

BAYER EAST AFRICA

LIMITED.....
..... 1ST RESPONDENT

BAYER ENVIRONMENTAL SCIENCES SA

LIMITED.....
2ND RESPONDENT

RULING

1. On 18th June 2013, two applications were due for hearing. One was a Notice of Motion Application by the Respondent dated 29th October 2012. In that Application the Respondent seeks various reliefs against the Claimant in relation to the acquisition of an exhibit filed by the Claimant. In the second Application dated 21st May 2013, the Claimant sought the expunging of two affidavits filed by the Respondents sworn by Mrs. Damaris Kimosop the Human Resources Manager of the 1st Respondent and the dismissal of the Respondents application dated 29th October 2012. Appearances were as before - Mr. Nduru appeared for the Claimant while Mrs. Opiyo appeared for the Respondents.
2. I allowed Mr. Nduru to urge his Application first. His submissions were that the affidavits by Mrs. Kimosop ought to be expunged as they were factually inaccurate. In central focus was the application for an entry permit for Mr. Nadim Mohr an employee of the Respondents. The depositions were said to contain distortions, untruthfulness and statements of misdirection to the Court. Mr. Nduru urged the Court to strike out the 2 affidavits. He wanted the affidavits struck out because according to the Claimant, the events she deposes to did not happen in the manner she stated in her affidavits. He went through the affidavits point by point highlighting the portions the Claimant took issue with.
3. The Claimant's application was strongly resisted by the Respondents. Mrs. Opiyo submitted that the proper course would have been for the Claimant to oppose her Application of 29 October 2012 and not file an application in opposition. She submitted that one cannot have an application trying to strike out another application. She submitted that indeed the Claimant seeks to detract the Court from determination of the application of 29 October 2012. She submitted that on the strength of **Festus Ogada v. Hans Mollin [2009] eKLR** the Court should not assist a party who has flouted the law as it offends public policy.

4. I heard the submissions of both parties and retreated to deliberate on the first application and only realise now that the two applications must be considered together. I will hear the Respondents dated 29 October 2012 before I set a date for the comprehensive Ruling in the matter.

It is so ordered.

Dated and delivered at Nairobi this **14th** day of **June** 2013

Hon. Mr. Justice Nzioki wa Makau

Judge