



REPUBLIC OF KENYA



Hardie v Odundo t/a Olex Techno Enterprises (Commercial Case E009 of 2023) [2024] KEHC 511 (KLR) (26 January 2024) (Ruling)

Neutral citation: [2024] KEHC 511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL CASE E009 OF 2023
RE ABURILI, J
JANUARY 26, 2024**

BETWEEN

ROBIN HARDIE PLAINTIFF

AND

ALEX ODUNDO T/A OLEX TECHNO ENTERPRISES DEFENDANT

RULING

1. I have perused the pleadings in this case as filed on 21st September 2023. I observe that only the verifying affidavit was signed by the Plaintiff. The Complaint, witness statement and list of documents were never signed.
2. More importantly, is that the complaint and witness statement are unsigned and undated. The court can ignore the dating aspect and consider the pleadings as having been dated on the date of filing in court.
3. However, failure to sign a complaint and statement of a witness is fatal to the Plaintiff's claim as there is no way the court can authenticate the pleading.
4. Such defect is fatal and is not a procedural technicality which is curable by application of Article 159 of the *Constitution*.
5. There was therefore nothing that the Plaintiff was verifying by his affidavit sworn on 12th September 2023 at Edinburg, Scotland before Lewis Shand, a notary public.
6. Where a pleading is not signed by either a party or their advocate, or recognized agent, it is amenable to be struck out. This is because signing of pleadings authenticates the pleadings and such signing is a voucher that a case is not a mere fiction.
7. Ownership of pleadings is very crucial in litigation. See *Cheraik Management Ltd vs NSSF Board of Trustees & Another* (2012) eKLR and JR 176 of 2017 *Nairobi City County Government v KRA & Another* (2017) eKLR.



8. For the above reasons, I hereby strike out the undated and unsigned plaint and witness statement filed in this court on 21st September 2023 with no orders as to costs.
9. The party is at liberty to file fresh pleadings which are duly authenticated.
10. I make no orders as to costs.
11. The Registry to notify the Plaintiff's advocate forthwith.
12. This file is accordingly closed.
13. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF JANUARY, 2024

R. E. ABURILI

JUDGE

