



Case Number:	Misc Civ Appli 96 of 2003
Date Delivered:	18 May 2006
Case Class:	Civil
Court:	High Court at Eldoret
Case Action:	Ruling
Judge:	Mohammed Khadhar Ibrahim
Citation:	REPUBLIC v DISTRICT LAND DISPUTES TRIBUNAL KIPKAREN & another Ex-parte DORCAS J. KISORIA [2006] eKLR
Advocates:	Mrs. Nyaundi for the ex parte applicant; Mr. Nandwa for the interested party
Case Summary:	<b>[Ruling] – PRELIMINARY OBJECTION</b> – objection to a jurat – where the affidavit was not endorsed by the person who prepared it – effect of – whether this is an incurable defect - Advocates Act section 35(1)
Court Division:	Civil
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Dismissed
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Misc Civ Appli 96 of 2003**

**REPUBLIC:**.....  
.....**APPLICANT**

**VERSUS**

**DISTRICT LAND DISPUTES TRIBUNAL  
KIPKAREN:**.....**RESPONDENT**

**SARAH . K. SORIA:**.....  
.....**INTERESTED PARTY**

**DORCAS J. KISORIA:**.....  
.....**EX-PARTE**

**R U L I N G**

The notice of motion dated 17<sup>th</sup> April,2003 under the provisions of Order 53 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act for a judicial review order of certiorari came for hearing before me when the counsel for the interested party raised the following preliminary objections in:-

1. That the Notice to the Registrar was defective for it bore two stamps on 11<sup>th</sup> and 12<sup>th</sup> March,2003.
2. The verifying Affidavit filed on 12<sup>th</sup> March,2003 is irregular, and incompetent since paragraph 11 and 12 have been amended.
3. That it is not indicated who drew the verifying Affidavit under section 35 of the Advocates Act.
4. That the jurat appears on a different page.

I disallowed the first preliminary objection as it did not raise a pure point of law. With regard to the issue of amendment of the affidavit, the amendments are in respect of the numbering of the paragraphs. They were amended in hand. I do hold that the objection is frivolous and unsustainable. The corrections are not strictly amendments that go to the substance and were necessitated by pure common sense that you cannot have two paragraphs numbered

10 or 11.

The interested party through counsel argued that the verifying Affidavit is incurably defective as it does not comply with the mandatory provisions of section 35 (1) of the Advocates Act. The person who drew or prepared or caused to be drawn and prepared the said verifying Affidavit did not endorse on the affidavit his name and address or the name or address of the firm of which he is a partner or employed.

Section 35 (1) of the Advocates Act reads as follows:-

“ 35 (1) Every person who draws or prepares or cause to be drawn or prepared, any document or instruments referred to in section 35 (1) shall at the same time endorse or cause to be endorsed thereon his name and address, or the name and address of the firm of which he is a partner and any person omitting so to do shall be guilty of an offence and liable to a fine not exceeding five thousand in case of an unqualified person or a fine not exceeding five hundred shillings in case of an advocate .....

Mr. Nandwa for the interested party relied on the case of **HC.CC. No.1736 of 2001 – BARCLAYS BANK OF KENYA LIMIVED –V- SOLOMON OTIENO ORERO.**

Mrs. Nyaundi for the Ex parte Applicant in opposition to the Application cited the decision in **DUBAI BANK KENYA LTD –V- COME –CONS AFRICA LTD HC.CC.No.68 of 2003 (MILIMANI COMMERCIAL COURTS).** In this decision, I held that the omission of the advocate's name and address on the verifying Affidavit was a mere irregularity in form and the same did not render the verifying affidavit a nullity or incurably defective.

In the present case, the chamber summons was drawn and filed by Wena & Company acting for the Ex parte applicants. The verifying Affidavit was in support of the statutory statement also drawn by the said firm. I hold that it is clear and certain that the application was drawn and filed by advocates. The verifying Affidavit must have also been drawn by the said advocates.

Mr. Nandwa has not persuaded me to change my view of the law on this point and I therefore hold that the said preliminary objection must fail.

In respect of the jurat, I find that it is not on its own and on a separate page. Page 2 of the Affidavit contains paragraphs 11 and 12 and then the jurat. It is part and parcel of the Affidavit which has 2 pages. This objection also fails.

I therefore do hereby dismiss the preliminary objections raised with costs to the Ex parte Applicant.

**DATED AND DELIVERED AT ELDORET ON THIS 18<sup>TH</sup> DAY OF MAY 2006**

**M. K. IBRAHIM**

**JUDGE**

18<sup>TH</sup> May,2006


Coram - Ibrahim 'J'

C/C - Chelanga.

Mr. Otieno holding brief for Mrs. Nyaundi for the Ex-parte Applicant.

No Appearance for the interested party.

Mr. Nandwa now present. Ruling delivered in their presence.

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