



**Women & Youth Against Aids and Poverty v Joz (Tribunal Case
E716 of 2023) [2023] KEBPRT 1134 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1134 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E716 OF 2023
M MAKORI, MEMBER
NOVEMBER 28, 2023**

BETWEEN
WOMEN & YOUTH AGAINST AIDS AND POVERTY APPLICANT
AND
JAMIL JOZ RESPONDENT

RULING

1. The applicant filed an Application dated 17/7/2023 seeking orders against the Respondent with reference to a House Erected on Plot No. 910463 Daisy Drive.
2. The said Application is opposed vide, a Notice of Preliminary Objection dated 18/8/2023 and a Replying Affidavit dated 1/9/2023 and sworn by Mohammad Jamil Joz.
3. The Notice of Preliminary Objection is anchored on section 4(1) of the [Oaths and Statutory Declarations Act](#), which provides: -

“A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any Court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court:

Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the advocate for any of the parties to the proceeding or concerned in the matter, or clerk to any such advocate, or in which he is interested.”

4. At this juncture, what commends itself for my determination is whether the Preliminary Objection dated 18/8/2023 is merited and what is the appropriate orders to grant in the circumstances.



In the case of James Francis Kariuki & Another V United Insurance Co. Ltd Civil Appeal No. 1450 of 2000, Hon. Justice Onyango Otieno, as he then was; held as follows: -

“That the verifying affidavit sworn by the plaintiffs is incurably defective as the Commissioner for Oaths while exercising the powers given, offended the mandatory proviso of Section 4(1) of the [Oaths and Statutory Declarations Act](#).”

“The simple facts of this case are that the Plaintiffs are, according to the Plaintiff represented by Njenga Mwaura and Company, Advocates. Mr. Njenga Mwaura is a Partner in the firm of Njenga Mwaura and Company, Advocates, who are the Advocates representing the Plaintiffs. The Verifying affidavit has been sworn before Njenga Mwaura as Commissioner for Oaths.”

“It will be clear from the above that Mr. Njenga Mwaura, being an Advocate in the firm that is acting for the plaintiff should not have allowed the verifying affidavit to be sworn before him as in any event, is an interested party.”

5. In *Kenya Federation of Labour & Another V. Attorney General & 2 Others* Industrial Court of Kenya at Nairobi, Case No. 735 of 2012, Hon. Justice Nzioki wa Makau held:-

“The short answer to that is that it would be against the provisions of the [Oaths and Statutory Declarations Act](#). A Lawyer cannot commission a document drawn by his/her firm. Indeed, the further affidavit by the claimants was defective in form as the jurat was not in conformity with the Oaths and Statutory Declaration Act.”

6. The Court has taken note of the impugned Supporting Affidavit dated 17/7/2023 drawn and commissioned by the firm of Ndiema & Company Advocates, P.O Box 16621-00620 Nairobi.
7. The said affidavit as thus offends the Provisions of 4(1) of the [Oaths and Statutory Declarations Act](#) as I have noted above and as thus it ought not to have been done as it is a breach of clear rules of practice.
8. I am as thus persuaded by the holding of court in [Caltex Oil \(Kenya\) Limited Vs New Stadium Services Station Limited & Another](#) [2002] eKLR where Hon Justice Onyango Otieno, as he then was, stated as follows: -

“I do think that the courts have a duty to rightly interpret the laws and to ensure that they do not condone any breaches of the same laws under any pretenses whatsoever. I still stand by what I did say in the case of James Francis Kariuki & Another Vs. United Insurance Co. Ltd HCCC No. 1450 at 2000 that such an affidavit sworn in violation of section 4 (1) of the [Oaths and Statutory Declarations Act](#) is for all intents and purposes not an affidavit as envisaged in law and is not capable of being received under Order 18 Rule 7 as it offends a provision of an Act of Parliament and does not represent a mere irregularity either in defect as to form or by misdirection of the parties, or in the title.”

9. In light of the foregoing, I find that the notice of preliminary objection dated 18/8/2023 succeeds, the application dated 17/7/2023 is struck out with costs.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 28TH DAY OF NOVEMBER, 2023.

HON. MIKE MAKORI (MR.)

MEMBER

28.11.2023



In the presence of Mr. Oguye for the landlord/Respondent

