**Kabebe v Makau and another**

**Division:** High Court of Kenya at Nairobi

**Date of ruling:** 22 April 2004

**Case Number:** 1222/99

**Before:** Ochieng AJ

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Affidavit – Jurat – Jurat not stating where affidavit sworn – Whether omission fatal – Section 5 –*

*Oaths and Statutory Declarations Act (Chapter 15) – Rule 10 – Oaths and Statutory Declarations Rules.*

*[2] Amendment – Leave to amend –Plaint amended without leave – Whether entire suit liable to be*

*struck out.*

**Editor’s Summary**

Before the commencement of the trial of the suits the first and third defendants raised preliminary objections to the suits on grounds, *inter alia*, that one of the suits was based on a plaint that was amended without leave of the Court and that the affidavit in support of the plaintiff’s originating summons was incurably defective because the jurat did not state where the affidavit was sworn. They asked the Court to strike out the two suits.

**Held** – Although the plaintiff amended his plaint in the first suit without leave of the Court the main suit would remain alive and only the amendments would be struck out. Section 5 of the Oaths and Statutory

Declarations Act and rule 10 of the Oaths and Statutory Declarations Rules requires that the place where an affidavit is sworn be indicated in the jurat. The embossment of a commissioner for oath’s rubber stamp showing “Nairobi” is not in compliance with rule 10 because that only shows the commissioner’s postal address.

The omission in the jurat to state where the affidavit was sworn is not fatal and the Court has a discretion to allow an affidavit notwithstanding the omission. The Court may in some instances direct that the affidavit be re-sworn*. DB Shapriya and Company Ltd v Bish International BV* [2002] 1 EA 47 considered, *Amira (K) Ltd v National Irrigation Board* [2001] 2 EA 333 approved, *Odongo v National Social Security* [1999] LLR 1024 (CCK). The preliminary objections were dismissed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

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*Amira (K) Ltd v National Irrigation Board* [2001] 2 EA 333 – **APP**

*DB Shapriya and Co Ltd v Bish International BV* [2002] 1 EA 47 – **C**

*Narok Transit Hotel Limited and another v Barclays Bank of Kenya Ltd* [2001] LLR 852 (CCK) – **C**

*Odongo v National Social Security* [1999] LLR 1024 (CCK) – **AP**

**Ruling**