**Mayers & another v Akira Ranch Ltd**

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

**Date of judgment:** 17 September 1973

**Case Number:** 166/1971 (60/74)

**Before:** Harris J

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*[1] Evidence – Admissibility – Affidavit – Containing hearsay – Inadmissible on application to rectify*

*share register of company.*

*[2] Civil Practice and Procedure – Affidavit – Striking out – Retention of inadmissible matter would be*

*oppressive – Civil Procedure* (*Revised*) *Rules* 1948, *O.* 18, *r.* 6 (K)*.*

**Editor’s Summary**

The applicants filed an application for the rectification of the register of the respondent company together with an affidavit stating certain matters on information supplied to the deponent by a third party. The respondent applied to strike out parts of the affidavit as oppressive, contending that the application was a substantive, not an interlocutory application, and that hearsay evidence was inadmissible. The applicants contended that the evidence had been accepted by the respondent.

**Held –**

(i) the respondent had not waived its rights;

( ii) the application is a substantive and not an interlocutory one (*St. Benoist Plantations Ltd*. (1) and

*Boyes v. Gathure* (2) followed.);

(iii) parts of the affidavit were hearsay and inadmissible as evidence;

( iv) to retain inadmissible matter in an affidavit would be oppressive and it would therefore be struck out.

Order accordingly.

**Cases referred to Judgment:**

(1) *St. Benoist Plantations Ltd. v. Felix* (1954), 21 E.A.C.A. 105.