**Republic v National Environment Management Authority and others *ex parte***

**Greenhills Investment Ltd and others**

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

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

**Date of judgment:** 23 May 2005

**Case Number:** 169/04

**Before:** Nyamu J

**Sourced by:** Lawafrica

*[1] Advocate – Advocate’s deposition in affidavits – Whether advocate can depone to affidavit on state of court record.*

*[2] Judicial review – Applicability of Civil Procedure Rules – Whether Order 18 applies to judicial review proceedings.*

**Editor’s Summary**

A preliminary objection was taken to the effect that two affidavits in the matter sworn by counsel for the applicant were a nullity and ought to be struck out. The reasons for the objection were that the affidavits did not comply with the provisions of Order XVIII, rule 3 of the Civil Procedure Rules, which stipulates that affidavits ought to be confined to such facts as the deponent is able of his own knowledge to prove, and, the affidavits related to contentious matters and an advocate ought not depone on contentious matters as that was specifically prohibited in the rules made under the Advocates Act.

**Held** – There can never be a better deponent than an advocate on issues relating to archives or court records, such matters are within an advocate’s knowledge. It is doubtful whether Order XVIII does apply to judicial review proceedings. There is nothing contentious with an advocate deponing on the state of the court record. Any contention can always be resolved by the court looking at the record and, therefore, the possibility of an advocate descending into the arena of contest are remote. Objection disallowed with costs.

**No cases cited**