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

**Greenhills Investment Ltd and others**

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

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**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.*

**JUDGMENT**

**Nyamu J:** The objection raised in this matter when the application dated 10 May 2004 came for hearing before me is that the two affidavits sworn by Mr *Mwenesi*, the learned Counsel for the applicant are a nullity and ought to be struck out: (*a*) Because they do not comply with the provisions of Order XVIII, rule 3 which stipulates that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove (*b*) Because they relate to contentious matters and an advocate ought not depone on contentious matters as this is specifically prohibited in the rules made under the Advocates Act The court has considered the submissions of counsel. As regards the first objection a careful scrutiny of the affidavits indicate that the substance and content of the affidavits substantially relate to the court record or archives. 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. I do not think Order XVIII does apply to judicial review and even if it did the objection cannot be sustained for the two reasons given above. Turning to the second objection I find 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 the possibility of an advocate descending into the arena of contest are remote. In the instant case reference is clearly made to the affidavit of Professor Pitt Situma sworn on 7 April 2005, which represents the factual base of the application. In result, the objections are disallowed with costs to the applicant. Application to be set down for hearing on merit. For the appellant:

*Mr Mwenesi*

For the respondent:

*Information not available*