

PPPPHouse
P. O. Box PPPP
NAIROBI

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATES COURT AT MILIMANI

CIVIL SUIT NO. EJ. LLL OF 1992

**BBBBBBBBBBB t/a
YYYYYYYYY BUS SERVICES.....DEFENDANT/APPLICANT**

-VERSUS-

BILL INVESTMENTS LIMITED.....PLAINTIFF/RESPONDENT

AFFIDAVIT

I, **BBBBBBBBBBB** of Post Office Box Number 10278 Nairobi in the Republic of Kenya make oath and state as follows:-

1. **THAT** I am the Applicant herein named and I am therefore competent to swear this affidavit on my own behalf.
2. **THAT** on 23rd April 1992 the Plaintiff instituted R.M.C.C No. EJ LLL of 1992 against me as trading as Yyyyyyyy Bus Service. Annexed hereto and marked "LLL1" is true copy of the Plaint.
3. **THAT** upon service of summons to Enter Appearance, I filed a Defence denying liability. Annexed hereto on page 2 and marked "LLL1" is a true copy of the Defence.
4. **THAT** I did not at any time trade as Yyyyyyyy Bus Service.

5. **THAT** Yyyyyyyyy Bus Service Limited is a limited liability company, completely independent from me and if the Respondent had any claim against it, the same should have been filed against Yyyyyyyyy Bus Service Limited and not against myself. Annexed at Page 3 of the Exhibit is a copy of the certificate of incorporation.

6. **THAT** I ceased to be a director of the said company on 27th November 1991 way before the subject suit was filed by the Plaintiff. Annexed at page 4 of the exhibit is copy of the Return lodged with the Registrar of Companies at the Companies Registry in support thereof.

7. **THAT** the issue of the description of the Applicant was raised as a ground the Application dated 10th March 1997 (“the said Application”) filed in Civil Appeal No. 139 of 1995 in the High Court. Annexed at pages 4 to 8 of the exhibit is a copy of the said Application.

8. **THAT** the said Application was heard by Honourable Justice Msagha Mbogholi who not only allowed the appeal, but also ordered inter alia, that there be a re-trial of this suit before another magistrate on competent jurisdiction. Annexed hereto at pages 9 to 10 of the exhibit marked “LLL1” is a copy of the said ruling.

9. **THAT** the Learned Judge at page 2 of the said ruling also made a finding that there had been a mis-joinder of parties in the subject suit which issue was not resolved by the learned trial Magistrate.

10. **THAT** the finding by the Learned Judge that there was a misjoinder of the parties in the subject suit was one of the reasons given by the Learned Judge for setting aside the judgement of the lower Court and allowing the Appeal.
11. **THAT** I am advised by my advocates on record Messrs VVVVVV and Company Advocates which information I verily believe to be true that since the ruling of the High Court was made on 9th December 1997, the Plaintiff has failed to amend its Plaint to include the proper Defendant or at all.
12. **THAT** the subject suit has now been set by the Plaintiff for hearing on 24th November 2000.
13. **THAT** I am advised by my lawyers aforesaid which advice I verily believe to be true that technically, and by virtue of the findings of the Learned Judge of the High Court, the Defendant as described in the Plaint is no longer a party to this suit.
14. **THAT** I am advised by lawyers aforesaid which advise I verily believe to be true that in view of the foregoing the circumstances, if the suit is allowed to proceed to fresh hearing with the Applicant as the Defendant, the Respondent shall be asking the Court to make orders in vain and will further amount to an abuse of the Court process.
15. **THAT** there is a sum of KShs. 230,641.25 paid by the Applicant in his personal capacity to Court pursuant to the order of the Court made on 9th December 1997 which amount the Applicant has on numerous occasions requested the Chief Magistrate (Milimani Courts) to authorise the release thereof to the parties

hereto for purposes of depositing the same in an interest bearing account. Annexed at pages 11 to 16 are copies of correspondence from the applicants advocates requesting for the release of the said monies.

9. **THAT** to date, the said monies have not been released to neither the Applicants nor the Respondent's lawyers as a result of which the Applicant continues to suffer loss and damage on account of interest which would otherwise be earned in respect of the said sum.

10. **THAT** I am advised by my advocates which advice I verily believe to be true that should the Court order the striking out of the name of Applicant from this suit, then, the said monies paid by the Applicant into court as aforesaid should be released forthwith to the Applicant.

11. **THAT** what is deponed to hereinabove is true to the best of my knowledge save as to matters deponed to on information sources whereof have been disclosed and matters deponed to on belief hereupon the grounds have been given.

SWORN BY the said **STEPHEN**)
)
MUSYIMI KIMOLO) at Nairobi)
)
this day of 2000)
)
)
)
BEFORE ME)
)
)
)
COMMISSIONER FOR OATHS)

DRAWN AND FILED BY:-

VVVVVV and Company
Advocates for the Defendants
PPPPP Hous
P.O. Box PPPPP
NAIROBI

TO BE SERVED UPON:-

KKKK and Co. Advocates
Advocates for the Plaintiffs
NAIROBI