



It is now a settled position of law that generally, the amendment of an affidavit is generally not permitted since the affidavit contains evidence which cannot be subjected to amendment and as such, the option usually available to a party that wishes to amend is to file an additional affidavit (**See Oyiki and Others Vs Kampala University Miscellaneous Cause No. 129 of 2022.**) However, there may be some exceptions where the Courts may allow such amendments to take place. To understand these circumstances, it is important to understand the format of an Affidavit so as to understand what constitutes evidence in that affidavit and what does not. Reference shall be made to the decision of the East African Court of Justice decision in the case of **Attorney General of the Republic of Burundi Vs Niyongabo Theodore and Another Application No. 06 of 2022** wherein it was held that;

*“... an affidavit is drafted or structured as a general practice in a particular way the components of which are: -*

- 1. Commencement: This is the beginning of the document where the affiant or the person making the affidavit is identified.*
- 2. Averments: Also known as affirmations, these include a list of all the claims that are being made by the affiant.*
- 3. Statement of Truth: A statement of truth is what states that everything that is mentioned in the affidavit is true. A statement of truth may be something like this: I solemnly swear that the forementioned are true and correct to the best of my knowledge and belief.*
- 4. Attestation Clause: This is the portion where the oath made by the affiant is certified. It also consists of the date.*

5. *Signatures: This is the last portion of the document that includes the signature of the affiant, as well as that of the witness(es).*”

The Court further held that;

*“It is necessary therefore to carefully interrogate the Application to amend in light of which part the affidavit will be affected. **It is therefore not correct as the Respondent would want the Court to believe that the whole of an affidavit is evidence as the evidence is to be found in the averment component of an affidavit.**”*

(Emphasis is mine)

In the instant case, the Applicant wishes to amend paragraph 11 of the Affidavit in Support of the Application by replacing the phrase "my application" with "instant application". The said paragraph states;

*“**THAT** I swear this affidavit in support of my application to strike out Civil Suit No. 0066 of 2024”*

Upon consideration of the impugned paragraph, it is manifest that the same does not contain any averment of fact and, as such, cannot be treated as evidence before this Court. Rather, its proper characterization lies either as a statement of truth or as a continuation of the introductory part of the affidavit, depending on the drafting style employed by learned counsel who prepared it. What is beyond dispute is that it does not amount to an evidential averment. For that reason, the paragraph squarely falls within the recognized exception which allows for the amendment of affidavits.

Turning to the question of whether good cause has been shown for the amendment, I find the justification straightforward. The Applicant in this matter is Luyima

Hood. However, the affidavit in support of the Application was sworn by Nankumbi Stella Kevin, an advocate with Messrs Pentagon Advocates, who represent the Applicant. Although she deponed the affidavit, she is not the Applicant. This created a drafting error in paragraph 11, where the words “my application” were used, yet the application properly belongs to the Applicant. The proposed amendment, substituting the phrase “my application” with “instant application,” is therefore necessary and appropriate to correct the error and to allow the Application to be considered fairly and to its logical conclusion.

To hold otherwise and deny the amendment sought would amount to a rigid adherence to technicalities at the expense of substantive justice. What is before Court is an application to amend a drafting error, which does not in any way affect the substance of the affidavit. The duty of this Court is to ensure that justice is dispensed by enabling each party’s case to be properly and fully presented, rather than fettering it on account of minor lapses in drafting. To disallow the amendment in these circumstances would be to elevate form over substance and risk denying justice, instead of facilitating a wholesome and fair determination of the real issues in controversy.

For the foregoing reasons, the Application to amend paragraph 11 of the Affidavit in Support of the Application is hereby granted.

I so order.



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**FARIDAH SHAMILAH BUKIRWA NTAMBI**

**AG. JUDGE**

Delivered this 26<sup>th</sup> day of August 2025.