

**ARTICLE ON WHETHER A PERSON OTHER THAN THE DEPONENT COULD SIGN AN AFFIDAVIT AND WHAT IS THE LEGAL EFFECT OF AN AFFIDAVIT SIGNED BY A PERSON OTHER THAN THE AFFIANT**

**WRITTEN BY:KARIM SAMURA(WELL KNOWN AS AMICUS CURIAE).**

This article endeavors to offer a meticulous and legally sound exploration of the question concerning the validity of an affidavit when executed by a person other than the affiant, and the subsequent ramifications thereof, particularly in relation to its admissibility by the court. In pursuit of this objective, I will scrutinize the relevant stipulations outlined in the High Court Rules of 2007, Which makes provisions for the rules that guide the conduct of civil proceedings in the High Court of Sierra Leone, alongside pertinent judicial precedents from other Commonwealth jurisdictions.

To start with, in order to determine whether someone other than the deponent could sign an affidavit, consideration must first be given to the **High Court Rules of 2007**,<sup>1</sup> since it is a constitutional instrument that makes provision for the rules that guide the conduct of civil proceedings in the High Court of Sierra Leone.

**Order 31 Rule 1 Sub Rule (9) of the High Court Rules reads:**

***‘Every affidavit shall be signed by the deponent and the jurat shall be completed and signed by the person before whom it is sworn’.***<sup>2</sup>

This provision clearly underscores the requirement that the person providing the statements in the affidavit must also be the one to sign it. This stipulation ensures the authenticity and credibility of the information contained within the document, as it affirms that the individual making the statements takes full responsibility for their accuracy and truthfulness. Such a strict alignment between the affiant and the signatory serves to bolster the legal validity and reliability of the affidavit, making it an excellent representation of the facts and statements it contains.

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<sup>1</sup> **High Court Rules of 2007, Constitutional Instrument No. 8 of 2007.**

<sup>2</sup> **High Court Rules of 2007, Constitutional Instrument No. 8 of 2007 Order 31 sub Rule 9**

Further, the provision supra has been unequivocally reaffirmed and restated by the High Court in the case of **HAJA FANTA DARAMY V EMMANUEL SANKO SAWYER AND OTHERS**<sup>3</sup> that it is mandatory for an affidavit to be signed by the deponent to which the honourable Justice Binneh Kamara puts- :

***“the Sub-rule( 9) of Order 31 Rule 1) makes it mandatory and not directory (using the auxiliary verb ‘shall’ in the provision) for the affidavit to be signed by the deponent and that the jurat shall be completed and signed by the person before whom it is sworn (The emphasis is on the underlined words).”***<sup>4</sup>

However, **Order 31 Rule 3(c)** is the only provision in the High Court Rules that provides for an exception. In this case, the affidavit of a deponent who is blind or illiterate can be but must be certified in a jurat.

### **THE APPROACH IN OTHER COMMONWEALTH JURISDICTIONS**

With regard to the practices of other Commonwealth jurisdictions, I shall begin by examining the approach adopted by England and Wales. Given that our legal framework is heavily influenced by, and often borrowed from, their laws, and in light of their ongoing efforts to modernize and harmonize their laws to be in tune with contemporary needs, it is judicious to consider their stance. Additionally, It is noteworthy that by virtue of **Section 74 of the Courts Act**<sup>5</sup> of the Republic of Sierra Leone, the Courts of Sierra Leone are allowed to use the common law of England, doctrines and principles of Equity, and Statutes of General Application in force in England before the 1st Day of January 1880. However, where such common law is used, it merely has persuasive authority as opposed to binding legal authority. Subsequently, I will consider that of Nigeria which has an analogous system as ours.

In the United Kingdom, this principle has been in existence in England for time immemorial and even prior to the coming into existence of the Civil Procedure Act.

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<sup>3</sup> Haja Fanta Daramy v Emmanuel Sanko Sawyer and others c.c 12/20 2020 d. no.2 para.8.,

<sup>4</sup> Ibid

<sup>5</sup> Court Act of 1965, Section 74

This could be evidenced from the apt old English case of **DOWN V. YEARLY**<sup>6</sup> where it was stated that an affidavit when sworn to must be signed by the deponent or if he cannot write or is blind, marked by him personally with his mark in the presence of the person before whom it is taken and that an unsigned affidavit is no affidavit and cannot be relied upon in a matter or action sought to be proved by affidavit evidence.

Further, the case of **HAEDERLE (Thomas) V. DIERK THOMAS**<sup>7</sup> the Court stated that since Mr. Thomas, the deponent, failed to comply with the practice direction, by failing to sign the affidavit, it made the affidavit not an affidavit in law on the ground that “ ***Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn***”.

The position of the law in Nigeria was echoed in the case of **CHEVRON NIG. LTD. V. ENIOYE AND ORS.**,<sup>8</sup> while interpreting the equivalent of **Section 117(4) of the Evidence Act 2011 (Evidence Act)**, the court stated that an affidavit not personally signed by the deponent is an important omission and thus a fundamental vice. The Court set aside its own judgment and struck out the application on the sole ground that the affidavit in support of the application was not signed by the deponent. The court further said that, It is a logical and legal conclusion that all the justifications for the application's success, as outlined in the affidavit presented by the Court on **pages 162 to 168** of the record, which lacked the signature of the deponent, are devoid of substance. Consequently, there were no grounds upon which the Court could exercise its discretion in favor of granting the application. The eloquent and appealing arguments put forth in the appeal, which lack a foundation in evidence due to the rejection of the unsigned affidavit, do not contribute to strengthening the appellants' case in the present appeal. These observations were made by **JOSEPH SHAGBAOR IKYEGH, JCA, in his judgment (Pages 7 to 9, Paragraphs F to B)** see the case of **LAGOS STATE TRAFFIC MANAGEMENT AUTHORITY & ANOR V. ADEBANJO (2018) LPELR-46639(CA)**  
**Additionally**, In the recent case of **ALUKO V THE CHAIRMAN OF EFFCC**<sup>9</sup>, the Court stated that :

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<sup>6</sup> Down v. Yearly (1874) w.n. 158

<sup>7</sup> Haederle (thomas) v. Dierk Thomas (2016) [2016] EWHC 3498 (ch)

<sup>8</sup> chevron nig. ltd. v. Enioye and Ors. (2005) 1 f.w.l.r. (pt. 252) 295 at 300

<sup>9</sup> Aluko v The Chairman of EFFCC (2022) lpelr- 57518 (ca),

***“...affidavit purportedly filed by the Applicant is not signed by the deponent, notwithstanding that the Commissioner for Oath signed his portion. Therefore, there is no affidavit in support of the motion. Everything predicated on this motion collapses as the Applicant cannot put something on nothing and expect it to stand. Where a document purports to be an affidavit in support of the motion not signed by the deponent, it is a worthless document that has no evidential value.”***

***Further,*** Per MOHAMMED LAWAL ABUBAKAR, JCA (Pp 18 - 20 Paras F - C) stated that :

**“No sane Judge will allow an affidavit that is unsigned/unsworn by the deponent attached to an application to scale through his Court as it is incompetent and liable to be struck out. The argument of the Appellant's Counsel that the fundamental right to fair hearing of the Appellant has been infringed cannot hold water as the lower Court is only performing its duty in accordance with the law.”**

This judgment underscores the importance of procedural compliance in legal proceedings. An unsigned affidavit lacks evidential value, and its inclusion can undermine the integrity of a motion or application. The court's primary concern is to ensure that the proceedings are conducted within the ambit of the law, and this sometimes requires dismissing or striking out materials that do not meet legal standards, even if it appears harsh or technical.

Conclusively, the approach taken by some courts in other commonwealth jurisdictions is that a person other than the deponent could not sign an affidavit.

**THE EFFECT IT HAS ON THE JURISDICTION OF THE COURT; WHETHER IT DEPRIVES THE COURT OF JURISDICTION.**

With respect to its effect, **ORDER 31 RULE 4** of the High Court Rules states that “ ***the Court may receive an affidavit sworn for the purpose of being used in the cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat or any other irregularity in its form...***”

This provision, through the use of the word “***may***” , gives the Court the discretionary power to strike out an affidavit that is defective.

In this instant case, the Court may be persuaded to strike out the application since allowing someone else other than the deponent to sign an affidavit would run contrary to the very essence of what an affidavit represents i.e – a personal declaration of facts made under oath. If someone other than the deponent were to sign it, it would undermine the integrity and reliability of the affidavit as evidence.

Additionally, the Court could exercise its inherent Jurisdiction to strike out the application since allowing an affidavit that is signed by someone other than the deponent to apply, will set a dangerous precedent, leading to a potential surge in fraudulent affidavits. This would essentially negate the purpose of requiring a deponent to sign an affidavit.

In the decision of **CHEVRON NIG. LTD. V. ENIOYE AND ORS. (2005) 1 F.W.L.R. (PT. 252) 295 AT 300**, when considering the provision similar to **Section 117(4) of the Evidence Act 2011**, the Court determined that an affidavit that isn't personally signed by the individual giving the statement (the deponent) contains a significant oversight, which is fundamentally flawed. As a result, the Court retracted its prior ruling and dismissed the request based exclusively on the fact that the supporting affidavit hadn't been signed by the deponent.

**ALUKO V THE CHAIRMAN OF EFFCC (2022) LPELR- 57518 (CA)**, a decision of the Court of Appeal in Nigeria. The core issue revolves around an affidavit that was attached to a motion before the court and the court stated that Affidavits are formal sworn statements of fact, typically signed by the deponent (person making the statement) and witnessed by a Commissioner for Oaths or Notary Public..

The court opined that since the affidavit wasn't signed by the deponent, it essentially didn't exist in a legal sense. The court used the analogy that the **"Applicant cannot put something on nothing and expect it to stand,"** which is a common legal principle derived from the Latin maxim, "Ex nihilo nihil fit" (nothing comes from nothing). In simpler terms, the court indicated that you cannot base a legal argument on an invalid or nonexistent foundation and expect it to have legal merit. Affidavits serve as evidence in court proceedings. When an affidavit is unsigned, it fails to serve its primary purpose of being a sworn statement by a deponent. As such, any legal argument or motion that relies on an invalid affidavit is fundamentally flawed. The court, thus, deemed such an unsigned affidavit as a **"worthless document"** with **"no evidential value."** Per **MOHAMMED LAWAL ABUBAKAR, JCA.**

The judgment also addresses an argument raised by the Appellant's Counsel. The Counsel contended that the Appellant's fundamental right to a fair hearing was infringed. However, the court rejected this contention, emphasizing that the lower court was merely adhering to the law by not accepting an affidavit that is not signed by the deponent. Arguably, this offence is aimed at maintaining the integrity of legal proceedings and preventing fraudulent manipulation of evidence.

## **CONCLUSION**

Based on the detailed analysis provided supra, the legal conclusion is clear and unequivocal: affidavits must be personally signed by the deponent to be considered legally valid within Sierra Leone and by extension in relevant Commonwealth jurisdictions. This requirement is deeply rooted in both the statutory mandates, specifically the High Court Rules of 2007, and in the jurisprudence emanating from Sierra Leone, England, Wales, Nigeria, and potentially other Commonwealth countries. The necessity for personal signatures on affidavits is not merely procedural but fundamental to the integrity of legal processes. It ensures that the statements made are personally acknowledged and that the deponent assumes full responsibility for their content, thereby safeguarding the authenticity, credibility, and reliability of affidavits as pieces of evidence. The allowance for exceptions, such as in cases of blindness or illiteracy, does not dilute the principle but rather underscores the commitment to ensuring that all affidavits reflect genuine personal testimony within

the bounds of practical accommodation. The discretionary power of courts to overlook certain procedural defects does not extend to the fundamental flaw of an affidavit signed by someone other than the deponent. This kind of non-compliance strikes at the heart of the document's evidentiary value, rendering it not just irregular but fundamentally unacceptable.