

Affidavits in Legal Proceedings **An Overview**



1 Introduction

Though both affidavits and statutory declarations involve written statements made under oath, they are different and serve distinct functions in judicial and administrative proceedings. In Uganda, affidavits carry legal weight as evidence and are widely used in civil and criminal matters. Understanding the essence and significance of affidavits in legal proceedings is crucial, and this article gives insight into their nature and importance.

2. Definition

An affidavit is a written statement that affirms facts in judicial or equivalent proceedings or in instances where the law prescribes its use to establish, support, or challenge claims. In contrast, a statutory declaration is an oath-bound written statement that confirms specific facts or circumstances for non-contentious matters and administrative purposes, such as verifying identity or marital status. Both affidavits and statutory declarations must be sworn before a Commissioner for Oaths or equivalent.

3. Format

An affidavit must be written, signed by the deponent, and sworn or affirmed before a Commissioner for Oaths. In cases where the affidavit is prepared for an illiterate individual, a certificate of translation must be appended at the end by the drafter, certifying that they wrote the document based on the instructions of the illiterate. This certificate should also state that the drafter either read the document to the illiterate or explained its contents to ensure their understanding.

Other components of an affidavit include a heading stating the Court or Tribunal, parties' names, and case number; an introduction providing the deponent's name, address, and personal identification; a concise and understandable statement of facts and a verification confirming the truthfulness of the facts stated.

4. Who may make an affidavit?

An affidavit must be sworn by someone who possesses knowledge of the relevant facts. This principle was upheld in the case of *Namutebi Matilda vs Ssemenda Simon and 2 Others* (M.A.M. A No. 430/2021).

When an individual makes an affidavit on behalf of

others in a representative capacity, it is necessary to provide proof of authorization from the concerned parties as was affirmed in the case of *Vicent Kafeero & 11 others versus AG* (Misc Application No. 048 of 2012). In this case, the Court established that an affidavit may be considered defective if it lacks proper authority when made on behalf of another party.

5. Admissibility of affidavits

Courts can reject or refuse acceptance of an affidavit in specific circumstances. These are several but include if it is not sworn or affirmed by a competent person, lacks personal knowledge, contains hearsay evidence, is scandalous or frivolous, or constitutes an abuse of the Court's process.

When the Court strikes out an affidavit, it disregards it as evidence, which can adversely impact the outcome of the litigant's case. Courts carefully consider all relevant factors and exercise discretion when deciding whether to strike out an affidavit.

6. Substance over form

The "substance over form" rule in affidavits is a principle that recognizes the importance of the content and credibility of statements over minor technical errors. Rather than focusing solely on formalities, the Court gives priority to the credibility of the deponent and the reliability of the evidence presented. Corrections may be allowed if the errors do not affect the substance or credibility of the statements.

This rule ensures that relevant evidence is considered, regardless of specific formal requirements, and prevents affidavits from being unfairly dismissed based on minor technicalities. It serves to promote fairness by prioritizing the substance of the evidence over procedural details. The case of *Sugga v Roadmaster Cycles (U) Ltd* [2002] EA 2 illustrates this principle.

7. Cross examination

In legal proceedings, an affidavit can serve as evidence for the Court to consider. However, it does not prevent the opposing party from cross-examining the deponent. Cross-examination is a fundamental right that allows the opposing party to challenge the credibility, reliability, and truthfulness of the statements made in the affidavit.

Cross-examination plays a critical role in the legal

process as it allows for a thorough examination of the facts presented in the affidavit. Through cross-examination, the opposing party can scrutinize the deponent's claims, probe for inconsistencies or inaccuracies, and present counter arguments or contradictory evidence.

The purpose of cross-examination is to ensure a fair and informed decision by subjecting the statements in the affidavit to rigorous testing. It provides an opportunity for the opposing party to test the veracity of the deponent's assertions and present their own evidence or arguments.

8. Conclusion

Affidavits can provide valuable evidence in judicial proceedings. To optimize their effectiveness, it is important to understand and follow proper usage and drafting guidelines. Seeking guidance from a lawyer during the affidavit preparation process can greatly enhance its impact. By doing so, you can ensure accuracy, compliance with legal requirements, and contribute to a more effective resolution of the matter. Paying attention to grammar, punctuation, and flow in the affidavit is essential to present a clear and persuasive document that supports your matter.

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Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

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