

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HC MISC. NO. 4 OF 2014

TRNSLAKERS LIMITED1ST DEFENDANT/APPLICANT

MELECH ENG. CONSTRUCTION CO.....2ND DEFENDANT/APPLICANT

VERSUS

ANDREW MOMANYI & ANOTHERPLAINTIFF/RESPONDENTS

RULING

On 21st January, 2014 the applicant filed a Notice of Motion in which she sought a Stay of Execution of the decree/judgment in Kisumu **CMCC 184 OF 2012** and leave to file an appeal out of time. That application was heard by Muchelule -J who through a ruling read on his behalf by Chemitei-J on 27th June 2014 dismissed the same. On 10th July 2014 the applicant filed another Notice of Motion seeking to review the ruling read by Chemitei-J on 27th June, 2014 and also an order to order the taxing master to give reasons for the decision for arriving at costs of the sum of **ksh. 134,830/-**. Before that application could be heard the 2nd defendant/respondent filed a Notice of Preliminary Objection dated 23/7/2014. the matter could therefore not proceed on the Notice of Motion and on 9th October, 2014 Chemitei-J directed the parties to file written submissions on the Preliminary Objection. Submissions were duly received from both sides. Unfortunately those of the applicants do not address the preliminary objection but rather canvass the Notice of Motion. Those of the 2nd Respondent too raise matters that ought to have been raised at the hearing of the Notice of Motion. They do not raise pure issues of law such as envisaged in the celebrated case of **Mukisa Biscuits Co. V. West End Distributors (1969) EA 696**. Accordingly, the preliminary objection is dismissed and parties are directed to fix the Notice of Motion for hearing at the registry. Costs shall be in the cause.

Signed, dated and delivered this 19th day of March, 2015.

In the presence:-

Mr. Wachira advocate for 1st defendant/applicant

Mr. P.J. Otieno or Odambu for respondents

Court clerk: Moses Okumu