

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL SUIT NO 45 OF 2013

NEM INVESTMENT CO LTDPLAINTIFF

VERSUS

ELICIT MOTORS AND CONTRACTORS.....DEFENDANT

RULING

1. This ruling concerns the **notice of motion dated 09/09/2013**, which is an application by the Plaintiff for enlargement of time to file and serve reply to defence and defence to counterclaim out of time. The application is made under **Order 7, Rule 17(1) and (3)** of the ***Civil Procedure Rules, 2010*** (the **Rules**). **Sections 1A, 1B and 3A** of the ***Civil Procedure Act, Cap 21*** (the **Act**) are also cited.

2. The application was canvassed by way of brief written submissions filed by each side. No authorities were cited. I have considered those submissions. I have also read the affidavit sworn in support of the application. No replying affidavit was filed; but **grounds of opposition dated 08/04/2014** were filed, which I have read.

3. The claims in the grounds of opposition that the application does not lie and is a waste of the court's time, or that the application is incurably defective and an abuse of the court process, have not been substantiated at all in the Defendant's written submissions. The application indeed lies under Order 7, Rule 17 of the Rules and is not frivolous, nor an abuse of the process of the court. Nor is it defective in form or substance in any way.

4. The learned counsel has explained in her affidavit sworn in support of the application why reply to defence and defence to counter-claim were not filed in time. That explanation is that the learned counsel who had conduct of the matter for the Plaintiff, was on maternity leave and did not resume duty until 09/09/2013, when time to file reply to defence and defence to counter-claim had already passed. She filed the present application only nine (9) days later. I accept that explanation; at any rate, there is no replying affidavit disputing those facts. It also appears that no judgment has been entered yet in default of defence to the counterclaim.

5. I will allow this application in the interests of justice. The Plaintiff shall file reply to defence and defence to counter-claim within fourteen (14) days of delivery of this ruling, and serve the same within the time-lines set out in the Rules. The Defendant shall have costs of this application. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 23RD DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF JULY 2015