



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL SUIT NO. 163 OF 2012**

**DOMINION FARMS LTD.....PLAINTIFF**

**VERSUS**

**DIAMOND SHIELD INTERNATIONAL LTD.....DEFENDANT**

**RULING**

By its notice of motion dated 29-10-2012 the plaintiff prays that summary judgment be entered against the defendant as prayed in the plaint. The application is supported by the affidavit of one Chris Abir sworn on 29-10-2012.

The applicant from the plaint is asking from the respondent the sum of Kshs. 29,260,000/= together with interest at the rate of 20% as well as costs. The above sum is from the supply of rice which was allegedly sold to the defendant and which was not paid for. The applicant contends that the amount due initially was Kshs. 32,240,000/= but the respondent only paid Kshs. 3,500,000/= leaving the balance stated above.

In support of its application the applicant has attached several tender documents as well as bank statements among others. The respondent did file a defence as well as a counterclaim. The counterclaim specifically disputes the correct value of the bags of rice but does not deny having received the payment of Kshs.3,500,000/=.

The replying affidavit of Joyce Wanyiri Mwaura dated 4-10-2013 goes further to dispute the alleged indebtedness and in particular the supporting documents used in the applicant's application. I have perused the pleadings as well as heard the respective submissions.

It is now trite law that for any party to succeed in an application for summary judgment the issues in dispute must be very clear and should leave no room for ambiguity.

Any party looking at it should be able to clearly make an informed decision without the necessity of demanding any further evidence be it oral or documentary. Further, any application that shall require any iota of evidence should as of necessity be disallowed.

Parties must be allowed to ventilate their issues in court and indeed have their day. The defence as presented must be so frivolous that if it is allowed to go on shall not only be a waste of the much needed judicial time but of no probative value.

Having perused the pleadings herein the court is of the considered opinion that the defence and particularly the counterclaim requires further interrogation. The documents in support of the applicant's application need much interrogation and they cannot be relied on through affidavit evidence.

Beside these the amount of the rice bags is in dispute as well as the value thereof. There is equally a criminal angle which the respondent alleges and this cannot be ventilated by affidavits. The numerous attached annexures ought to be tested by the adduction of full oral evidence. There is equally the contentious issue of the correct amount of the bags delivered whether they are 5060 or 5600 as well as the discrepancies in the delivery dates

The upshot of the court's finding is that the matter ought to proceed to a full trial. The application is

therefore dismissed with costs to the respondent.

**Dated, signed and delivered at Kisumu this 21st day of January, 2014.**

**H.K.  
JUDGE**

**CHEMITEI**