



REPUBLIC OF KENYA

High Court at Mombasa

Civil Case 240 of 2011

1. C. MEHTA & COMPANY LIMITED

2. MEHUL INVESTMENTS LTD.....PLAINTIFFS

VERSUS

1. ROHIT K. C. DOSHI

2. AHMEDALI JIWAJI.....DEFENDANTS

RULING

Before court is the notice of motion application dated 10th December, 2012 in which the applicant prays for orders that:

“1. The 2nd defendant’s statement of defence dated 7th October, 2011 be struck out and judgment be entered against the 2nd defendant as prayed for in the plaint.

2. The costs of this application.”

MR. ANZALA Advocate argued the application on behalf of the applicant. The 2nd defendant/respondent despite having been served were not represented in court.

I have considered the application as well as the supporting affidavit annexed thereto. I have also perused the defence filed in court by the 2nd defendant on 17th October, 2011. The prayer being so right i.e. a striking out of a defence is a drastic measure which courts are reluctant to apply as it amounts to shutting out one party from the seat of justice. The 2nd defendants have filed a defence thus indicating their intention to defend the suit against them. It is only fair and just that they be allowed an opportunity to appear in court and plead his case. I therefore decline to strike out the defence as prayed. The plaintiffs to set the matter down for hearing and serve the 2nd defendants accordingly. The costs of this application will be met by the applicant.

Dated and delivered in Mombasa this 21st day of March, 2013.

M. ODERO

JUDGE

In the presence of:

Ms. Adagi h/b Mr. Anzala for Plaintiff/Applicant

No appearance for Defendant/Respondent

Court Clerk Mutisya