



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
ENVIRONMENTAL AND LAND DIVISION
FAST TRACK
CIVIL SUIT NO 525 OF 2012

LORNBY HOLDINGS LIMITED.....PLAINTIFF

VERSUS

CELINA WAMBUI KIGWE LIMITED.....1ST DEFENDANT

LUCY WANJIRU KIGWE.....2ND DEFENDANT

VIRGINIA WANJIKU KIMANI.....3RD DEFENDANT

ANN KARIRI.....4TH DEFENDANT

VIOLET MBUTHIA.....5TH DEFENDANT

RULING

1. The Plaintiff's Notice of Motion application dated 25th March 2013 and filed on the 26th March 2013 was brought under the provisions of Order 13 Rule 2 and Order 51 Rule 1 of the Civil Procedure Rules. It sought for orders that judgment be entered in favour of the Plaintiff against the Defendants for the sum of Kshs 10,000,000/=.
2. When the matter came up in court for the first time on 29th April 2013, the parties informed the court that the Defendants were really not opposed to the said application but that all they really wanted was for time to pay the said amount. The matter was then adjourned to 10th May 2013 for purposes of recording a consent.
3. On 10th May 2013, the Plaintiff informed the court that they had received a proposal of the settlement of the matter but nonetheless indicated that both parties could file their respective written submissions. During the court attendance on 24th May 2013, the parties confirmed to the court that they had filed the said submissions and requested that the court gives a ruling date as they did not wish to highlight the said submissions.
4. They both relied on Order 51 Rule 16 of the Civil Procedure Rules Cap 21 (of the laws of Kenya) which provides as follows:-

“ The Court may, in its discretion, limit the time for oral submissions by the parties or their advocates or allow written submissions.”

5. The court allowed the counsels' application and indicated that the said ruling would be delivered on notice.
6. At the time of writing the ruling, it came to the attention of this court that the matter was initially filed in the "Environmental and Land Division". All the court documents were filed under the said Division until the 26th March 2013 when the Plaintiff's application was filed in the "Commercial and Admiralty Division". The Defendants' Replying Affidavit bears the heading of "Environmental and Land Division". The respective written submissions were, however, filed under the heading of the "Commercial and Admiralty Division."
7. After careful perusal of the Plaintiff's claim, it is not clear how the matter moved from the "Environmental and Land Division" as there is no minute or directions by the court in the court file showing the movement of this file from the previous division to the Commercial & Admiralty Division.
8. It is also abundantly clear that there is no commercial element in this matter and this court cannot therefore make any orders herein as the same could conflict with the orders that could be made by the court which should be properly seized of the same.
9. In the circumstances, the court hereby declines to make a substantive ruling in respect of the Plaintiff's Notice of Motion application dated on 25th March 2013 and filed on 26th March 2013 and hereby directs that the parties to urgently take the appropriate steps to resolve the issue of the division that should be properly seized of this matter with a view to having the said application disposed of.
10. It is so ordered.

DATED and DELIVERED at NAIROBI this 30th day of August 2013

J. KAMAU

JUDGE