



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE 367 OF 2011

BRUCE BOUCHARD:.....PLAINTIFF

-VERSUS-

HACIENDA DEVELOPMENT HOLDINGS LTD. DEFENDANT

RULING

1. Before the Court is a **Notice of Motion** dated **26th June 2012**. It is taken out under **Sections 1A, 1B, and 3A** of the **Civil Procedure Act** and **Order 6 rule 1, Order 51 rule 1** of the **Civil Procedure Rules**. The application seeks for orders mainly that the Memorandum of Appearance dated **24th May 2012** filed herein by the respondent be struck out and that the further formal proof hearing slated for **25th September, 2012** proceeds *ex-parte*.
2. The application is supported by the affidavit of **GRACE G. KANYIRI**, an Advocate of the High Court having the conduct of this matter. The application is based on the grounds stated in the application.
3. The application is not opposed. Despite the fact that the Defendant was served as deponed in the affidavit of service filed in court on **16th July 2012**, the Defendant has not opposed the same either by filing grounds of opposition or filing a replying affidavit or attending court to submit in opposition thereof.
4. The brief history of the application is that the Plaintiff brought a suit against the Defendant by way of a **Plaint** dated **30th July 2011**. The Defendant was served with summons to enter appearance dated **30th August 2011**. The Defendant failed to file a defence within the stipulated time and as a result the Plaintiff filed a request for judgment and judgment was entered in favour of the Plaintiff. When the matter came up for formal proof hearing on **24th May, 2012** the Defendant filed a Memorandum of Appearance, which the Plaintiff claims was done without the leave of court and twelve months after the time for filing appearance expired. It is the said Memorandum of Appearance that the Plaintiff seeks to strike out by way of this application.
5. The Plaintiff's case is essentially that, the Memorandum of Appearance filed in Court on **24th May 2012** is irregular as the time to enter appearance has already expired and the Defendant ought to have sought leave from the court to admit the Memorandum of Appearance out of time.
6. I have considered the application herein. Under **Order 10 rule 3** of the **Civil Procedure Rules**, this court has the discretion to strike out a Memorandum of Appearance where the Defendant has failed to serve the same within the prescribed time. The Defendant has not opposed the application herein, a clear indication that they are guilty of laches by entering appearance out of time without the leave of the court. Without going further, the order that commends itself to this Court as a result of the foregoing is to allow

the application herein.

7. In the upshot, I hereby allow the Plaintiff's application in terms of prayer 1 and 2. The costs of this application shall be for the Plaintiff.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 18TH DAY OF SEPTEMBER 2012

E. K. O. OGOLA

JUDGE

PRESENT:

Kamami H/B for Kanyiri for the Plaintiff

N/A for the Defendant

Teresia – Court Clerk