

REPUBLIC OF KENYA

High Court at Mombasa

Civil Case 644 of 2011

MOURY OUMA KAWERE PLAINTIFF

=VERSUS=

HOUSING FINANCE COMPANY OF KENYADFENDANT

RULING

The Applicant has filed this Notice of Motion dated 2nd February 2012 seeking the following orders:

- “1. THAT summary judgement be entered against the defendant for the orders as prayed in the plaint.***
- 2. THAT the costs of this application be provided for”***

The Respondents filed their Replying Affidavit dated 5th April 2012 in opposition to the application. **MR. ATANCHA** Advocate appeared for the Applicant whilst **MS. MANGO** acted for the Respondent. Both counsel made brief oral submissions with respect to the present application.

The Applicant makes a prayer for summary judgment. I have considered this present application as well as the annexures thereto. I have also considered the replying affidavit. I note that the Defence dated 22nd March 2012 was filed in court **after** this application was filed. However the defence does in my view raise triable issues and as a court I would be loath to turn the Respondent away from the gates of justice. It is the interests of justice that the suit be heard inter-parties. For this reason I do dismiss this application for summary judgement and direct that the suit be heard inter parties. The Respondents to bear the costs for this application.

Dated and Delivered in Mombasa this 28th day of November 2012.

**M. ODERO
JUDGE**

In the presence of:

Mr. Nabwana holding brief for Ms. Mango for Respondent

No appearance by Mr. AtanCHA for Applicant