

REPUBLIC OF KENYA

High Court at Machakos

Civil Case 262 of 2011

MATHATANI LIMITEDPETITIONER

VERSUS

THE COMMISSIONER OF LANDS.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

THE CHIEF ENGINEER MINISTRY OF ROAD.....3RD RESPONDENT

KENYA NATIONAL HIGHWAY AUTHORITY.....4TH RESPONDENT

NICHOLAS O'DWEYER &CO. LTD OF IRELAND.....5TH RESPONDENT

ABDUL MULLICK ASSOCIATES LTD (K).....6TH RESPONDENT

COURT

As I sat down to craft the decision herein, it transpired that the 1st and 2nd respondent had filed a replying affidavit on 23rd October, 2012. Contemporaneously with the filing of the replying affidavit, the 2 respondents took out a Notice of Motion seeking leave of this court to file and serve out of time the replying affidavit. The application has since been served on the petitioner. The replying affidavit raises issues that may impact heavily and have a direct bearing on determination of the petition if the depositions therein are indeed true. They tend to portray petitioner as being less than candid with the court. Those issues cannot simply be wished away. Since the affidavit is on record this court is bound to look at it. However, it will be prejudicial to the petitioner if I embarked on the exercise without the benefit of its response. In the premises, I am constrained to put off the crafting of the decision until the application for extension of time and or the replying the affidavit is addressed one way or another.

DATED at MACHAKOS this 22ND day of NOVEMBER, 2012.

**ASIKE-MAKHANDIA
JUDGE**

DATED, SIGNED and DELIVERED at MACHAKOS this 30TH day of NOVEMBER, 2012.

**GEORGE DULU
JUDGE**