

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 294 of 2007

FIN RAZEL HOLIDAYS LIMITED.....PLAINTIFF

VERSUS

TAZMARK TOURS & TRAVEL LTD.....1ST DEFENDANT

TITUS MOTINDA KALUTI.....2ND DEFENDANT

RULING

By this application, the Plaintiff prays for orders that the 1st and 2nd Defendants/Respondents' amended defence be struck out for being frivolous and an abuse of the process of the court; that judgment for the liquidated sum of KShs. 5,405,146/= together with interest and costs, be entered in favour of the Applicant against the Defendants, jointly and severally. The application is brought by a Chamber Summons dated 24th October, 2007 and taken out under **Order V Rule 3(1) (b) (c) and (d), Order L. Rule 7** of the **Civil Procedure Rules**, and **Section 3A** of the **Civil Procedure Act**.

Even without referring to the Respondent's submissions, it is notable that in the original plaint dated 7th June, 2007 and filed in this matter on 12th June, 2007 the sum claimed was KShs. 3,726,060/=. The amended plaint dated 19th July, 2007 and filed on 20th July, 2007 claims the sum of KShs. 5,405,146/=. In the Plaintiff's written submissions, it is argued that the total sum outstanding and payable by the defendants, jointly and severally, is KShs. 4,097,232.97 inclusive of bank charges for dishonoured cheques.

In the light of these contradictory sets of figures, I find it difficult to settle on any one of them without calling evidence in proof. I therefore decline to enter summary judgment as prayed and instead direct that the parties do prepare the matter for hearing.

The Applicant will meet the Respondent's costs of the application.

It is so ordered.

L. NJAGI
JUDGE

DATED and DELIVERED at NAIROBI this 19th day of November, 2012

MABEYA
JUDGE