

REPUBLIC OF KENYA

High Court at Malindi

Miscellaneous Civil Application 37 of 2011

GATEWAY INSURANCE

COMPANY.....APPELLANT/PLAINTIFF

VERSUS

ANDERSON NZARO

MWATETE.....DEFENDANT

R U L I N G

The application made on 12th July, 2012 by the appellant is brought under the same provisions and factual basis as the appellants previous application filed on 14th September, 2011. I dismissed the said application on 5th July, 2012, on grounds inter alia that it did not come within the purview of Order 42 rule 6(2) especially with regard to a demonstration of likely substantial loss to be suffered by the appellant. Having gone through the affidavit in support of the present application and the submissions, I am unable to find that the material is any different; no substantial loss has been demonstrated by the appellant. I would adopt my ruling of 5th July, 2012 and therefore dismiss the instant applications.

Again, I must state that it is irregular for counsel for the respondent, Wangari Mwangi to purport to swear an affidavit on behalf of the respondent. For this reason, I will not award costs to the respondent.

Delivered and signed at Malindi this **7th day of November, 2012** in the presence of Ms. Njebiu for the appellant. Court clerk – Evans.

C. W. Meoli

JUDGE

7th November, 2012