



**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 4879 OF 1988**

**ANDREW ATAMBO ..... PLAINTIFF**

**VERSUS**

**CONTINENTAL DEVELOPERS LIMITED..... DEFENDANT**

Coram: Mwera J  
Ms Munga for Tolo for plaintiff  
Muchiri for Rach for defendant  
Njoroge court clerk

**RULING**

By the notice of motion dated 25.11.10 the plaintiff invoked the powers donated by the now repealed Order X rule 20, Order L rule 1 of the Civil Procedure Rules and Sections 3, 3A of the Civil Procedure Act praying:

i) that the defence dated 17.3.89 be struck out;

because the defendant had failed to comply with the order of the court dated 23.11.09 requiring it to make discovery within 14 days. The suit could not be prepared for trial for that non - compliance. A supporting affidavit reiterated what appears in the grounds.

There does not seem to be that the defendant replied by an affidavit what the plaintiff contended but both sides submitted and the court perused the scripts.

The court was however not minded to proceed to determine the application for the reason that since the filing of the application, the Civil Procedure Rules 2010 had come into operation. They cater for the course the parties should take in order to prepare a case for trial. The regime is complete as regards what ought to be done with witness statements, issues, documents to be relied on, endeavors to settle, arbitration etc.

With that regime in place, may the parties prepare the case herein for trial as per Civil Procedures Rules 2010 and have a mention in 30 days from the date hereof with a view to consider directions for trial.

Orders accordingly. Costs in the cause.

Delivered on 8/3/11.

**J. W. MWERA  
JUDGE**