



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL CASE NO. 129 OF 2010
LEXIS INVESTMENT LTDPLAINTIFF

VERSUS

J. J. OKWARO & CO LTDDEFENDANT

RULING

Since leave has already been granted to the defendant to rely on its affidavit dated 19th October 2010 to oppose the plaintiff's application dated 1st October 2010 and since the plaintiff's affidavit dated 21st October 2010 is directly in response to the defendant's application dated 19th October 2010 and therefore in response to the defendant's affidavit dated 19th October 2010 it would be fair and non-prejudicial for the plaintiff to rely on its affidavit dated 21st October 2010 in support and furtherance of its application dated 1st October 2010.

However, so that the application dated 1st October 2010 may not degenerate into one bringing into the fore the issues forming the substance of the applications dated 19th October 2010 and 21st October 2010 by the defendant and plaintiff respectively, they will only be allowed to rely on specified paragraphs of the two affidavits for the purposes of the application dated 1st October 2010. To that extent, the defendant may rely on paragraphs 13 to 20 of the affidavit dated 19th October 2010 deposed by its director **Rosemarie Okwaro** while the plaintiff may rely on paragraphs 2, 3, 4, 5 and 18 of the affidavit dated 21st October 2010 deposed by its property manager, **Mary Achieng Omondi**.

The parties are hereby reminded to adhere to the rules of practice and focus their minds towards a fair just and expeditious determination of the suit. They should therefore avoid unnecessary interlocutory applications which will only delay the expeditious disposal of the suit. If it appears to this court that the parties are more inclined towards interlocutory applications rather than final determination of the suit there will be no hesitation to put an end to that by the application of the oxygen (O₂) principle.

Dated, signed and delivered at Kisumu this 22nd day of October 2010.

J. R. KARANJA
JUDGE

JRK/aao