

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 475 of 2009

SENAR PLATFORM FZCO PLAINTIFF

VERSUS

CFC STANBIC BANK LTD. DEFENDANT

RULING

Chamber Summons dated 1/10/2009 brought under **Section 1A, 3A Civil Procedure Act** and **Order III Rule 12**. The orders sought are that the firm of M/S Gatheru, Gathemia & Co. Advocates be granted leave forthwith to cease acting for the plaintiff in this suit.

And that professional undertaking filed and dated 20/7/2009 be discharged and expunged from the court record. The first prayer is not opposed. However, the second prayer is strongly opposed by the respondent who has not filed any documents in opposition but appeared in court by counsel, Mr. Ogunde. The reasons why the prayer is made is that client company which is resident in Dubai has failed to respond to the advocates via SMSes and e-mail adequately thus making it impossible for the counsel to deal with this case.

And there is bitter fallout between counsel and client. The defendant has not to-date accepted the terms of the professional undertaking. The same ought to be discharged and expunged from the record.

The application is supported by affidavit of Gatheru Gathemia advocate in the firm of Gatheru Gathemia & Co. Advocates. It is sworn that Advocate and client have disagreed and the advocates wishes to withdraw from conducting the suit. The undertaking offered to the firm of Walker Kontos Advocates was under the express instructions of the client plaintiff company.

The undertaking was given in defence of Chamber Summons dated 13/1/2009 seeking an order for security of costs under **Order 25 Rules 1, 2, 4, 5 (1) and 6 of Civil Procedure Code**. The defendant was seeking for security in the sum of Kshs.12,414,174/=. The offer of undertaking was to act as a defence to avoid any security being ordered against the plaintiff in favour of defendant.

The advocate does not have authority and the undertaking does not have any consideration. In any case, the defendant or his advocates have not accepted the undertaking. They are still pursuing the application for security. It is my view that the defendant will have to seek security directly from plaintiff itself.

The orders therefore prayed under prayer (1) is granted. Leave is granted to withdraw. Prayer 2 is also granted.

“The professional undertaking filed on 20/7/2009 by the plaintiff is hereby discharged and expunged from the court record.”

Costs shall be in the cause.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 21st day of October 2009.

JOYCE N. KHAMINWA

JUDGE