

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Suit 39 of 2007

LANDMARK PWANI LIMITEDPLAINTIFF

VERSUS

ATHUMAN B. MWAKAMOLE1ST DEFENDANT

ZARRI CO. LTD.....2ND DEFENDANT

ZARRI INVESTMENTS LIMITED3RD DEFENDANT

AND

ERASTUS MUTHURI KARAGANIATHIRD PARTY

R U L I N G

The firm of Kiarie Kariuki, took out a summon dated 26th August 2008 in which it sought for an order to cease acting for the 2nd defendant. The application is supported by two affidavits, one is sworn by Kiarie Kariuki and the other by Dr. Kawaljeet Singh Rekhi. The application was not served upon the 2nd defendant because it is said the company did not exist.

It is the submission of Mr. Kariuki that he had no instruction to act for the 2nd defendant because he was instructed by a party who was not a director to the 2nd defendant. Having considered the grounds set out on the face of the summons and the supporting affidavits plus the oral submissions of Mr. Kiarie Kariuki. I am convinced that it is not feasible to effect service upon the 2nd defendant. For that reason I am convinced that the firm of Kiarie Kariuki was entitled to prosecute the application exparte. The application has merit. It is allowed as prayed.

Dated and delivered at Mombasa this 6th day of October 2008.

J.K. SERGON

J U D G E

In chambers in the presence of Miss Obura h/b for Kiarie Kariuki for the 2nd and 3rd defendants and Miss Amenge h/b Okong'o for plaintiff.