

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1201 of 2004

WOLFE PROJECTS & BUILDING CONSTRUCTIONS LTD..... PLAINTIFF

VERSUS

SADRUDIN ALIBHAI JIWA SAMJI..... DEFENDANT

RULING

This Ruling is made in the Chamber Summons dated 2nd August 2005 wherein the Plaintiff/Applicants seeks orders for

- (1) the defendants Amended Defence dated 27th July 2005 to be struck out under Order VI Rule 13 (d) of the Civil Procedure Rules and Order XII Rules 6 and 7 of the same.**
- (2) Judgment on admission against the Defendant/Respondent as prayed for in the Amended Plaint dated 11th July 2005.**
- (3) Costs of the application to be provided for.**

Mr. Ngoge for the applicant has sworn an affidavit in support of the application to the effect that the Amended Defence filed on 28th July 2005 is an abuse of the process of the court having been filed outside the time ordered by the Court. The Applicant's advocate has both in his deposition and in submissions before me stated that when he appeared before the Deputy Registrar of the High Court on 12th May 2005 applying for leave to file an amended Plaint, it was ordered that the Defendant files his Amended Defence within 7 days of the service of the Amended Plaint, which the Defendant did not do so.

I have perused the record of 12th May 2005 and have noted that although the Applicant herein in its application dated 25.4.05 sought an order for the filing of the amended Defence within 14 days of service of the Amended Plaint, the said prayer was not granted by the Honourable Deputy Registrar. The Deputy Registrars' order reads as follows:

“ORDER:

Prayer 1 of the Chamber Summons dated 25.4.2005 is granted. The Plaintiff to file the Amended Plaint within 7 days. Costs in the cause.”

Clearly from the above no orders were made as to when an Amended Defence was to be filed. Being premised grounds which are not true, the present application lacks merit and cannot succeed. The same is dismissed with costs to the Respondents. As the record suffices to rebut the Plaintiff Applicants contentions herein, I see no need to go deep into what the Defendant/Respondents submitted in reply to the application. The Court however notes with dismay that Counsel for the Respondent did not bother to check the record of 12th May 2005, having not been in Court, to confirm the orders made by the Court. In his affidavit of 30th August 2005 at paragraph 8 Counsel prefers to go by what Counsel for the applicant

told him in the corridors of the Milimani Commercial Court, which information was also not in conformity with the order of the Court. It appears to me that Counsel for the Respondent is extremely casual and lax in his manner of dealing herein and has allowed this application to proceed despite the fact that the same is premised on untruths.

I have no option, in the circumstances but to dismiss the application. I shall make no orders as to costs.

Dated and Delivered at Nairobi this 25th day of November 2005.

M.G. Mugo

Judge

In the presence of:

Mr. Odhiambo h/b for Ngoge for Plaintiff/Applicant

Miss Gisemba h/b for Abuga for Defendant/Applicant