



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCC NO. E091 OF 2018

WILFRED NGUNJIRI NDERITU

T/A NDERITU & PARTNERS ADVOCATESPLAINTIFF

VERSUS

NATIONAL HOUSING CORPORATION.....DEFENDANT

RULING

1. When the application dated 3rd September 2019 came up for hearing on 5th February 2020, **Mr. Ndirangu**, learned counsel for the plaintiff, urged this court to strike out the defendant's replying affidavits filed on 4th February 2020 on the basis that it was filed outside the 14 days period granted by the court on 7th November 2019.

2. On her part, Miss Nyaaga for the defendant sought the court's leave under order 50 Rule 6 of the Civil Procedure Rules to enlarge the time within which the replying affidavit should have been filed.

3. Articles 50(1) and 25(c) of the Constitution stipulates as follows on the right to fair hearing:

Article 50(1) of the constitution

(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

Article 25(c) of the Constitution ***(c) the right to a fair trial;***

Article 159(2) (d) on the other hand stipulates as follows:-

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(d) justice shall be administered without undue regard to procedural technicalities;

4. Having regard to the above cited Articles, I find that even though the defendant's replying affidavit was filed outside the 14 days granted by this court, the court still has the discretion, in the wider interest of justice, to allow/admit the replying affidavit considering that it has already been placed on record.

5. Courts have taken the position that the striking out the pleadings is a very drastic measure that can only be taken in rare instances as to do so will be tantamount to preventing a party from being heard.

6. In the present case, I find that no prejudice will be suffered by the plaintiff if the defendant's replying is admitted on record. Consequently, I admit the replying affidavit filed on 4th February 2020. The plaintiff is at liberty to file a further affidavit, if need be, in response to the replying affidavit, within 14 days from today's date.

Dated, signed and delivered in open court at Nairobi this 20th day of February 2020.

W. A. OKWANY

JUDGE

In the presence of:

Miss Ndirangu for Nderitu for plaintiff.

No appearance for defendant.

Court Assistant: Sylvia