



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 22 OF 2016**

**YAMIN CONSTRUCTION CO. LTD.....PLAINTIFF/RESPONDENT**

**VERSES**

**ARTHI HIGHWAY DEVELOPERS**

**LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

1. When this matter came up for hearing on the 2<sup>nd</sup> day of September, 2019 there was no appearance by the 2<sup>nd</sup> Respondent/Applicant. The plaintiff and the 1<sup>st</sup> Respondent entered into a consent dated 3<sup>rd</sup> September 2019 in which they settled the issues between them. What was pending between the plaintiff and the applicant was then subjected to hearing. The court then heard the two Plaintiff witnesses and thereafter closed its case. The court then reserved its ruling for 31<sup>st</sup> October, 2019.
2. The Applicant nevertheless filed the application dated 9<sup>th</sup> October, 2019 in which it prayed that it be allowed to defend the suit and the pending judgement be deferred awaiting the outcome of this application.
3. The application was not opposed by the Plaintiff and it appears that the issue between it and the 1<sup>st</sup> Defendant was settled.
4. The court has perused the reasons given by the Applicant as contained in the affidavit of **TIMOTHY KIHARA** as being plausible. It appears for example that there was a mediation exercise which was not done or not concluded. Secondly the said counsel who was in conduct of this matter was on leave.
5. It is appreciated that the date was taken during the vacation under the service week arrangements and thus not necessarily under the normal cause of the diary.
6. Be it as it may, save for time there is not much prejudice suffered by the Respondent. The issue between it and the 1<sup>st</sup> Respondent was settled during that period vide the consent. The amount of damages asked by the Plaintiff from the Applicant is colossal and therefore in the absence of any objection it be allowed to defend.
7. For the foregoing reasons the application is allowed as follows.

**(A) The proceedings of 2<sup>nd</sup> September, 2019 except the consent between the plaintiff and the 1<sup>st</sup> defendant are hereby set aside.**

**(B) The 2<sup>nd</sup> Defendant /Applicant is hereby allowed to defend the suit.**

**(C) This suit is hereby transferred to Nairobi for hearing and disposal as shall be directed by the presiding judge of the division.**

**(D) Costs of this application shall be in the cause.**

Dated, signed and delivered in open court this 16<sup>th</sup> day of April, 2020.

---

H. K. CHEMITEI

JUDGE

16/4/2020