

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT NO 57 OF 2018

GIRIAMA RANCHING COMPANY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

DEVELOPMENT BANK OF KENYA

GARAM INVESTMENTS AUCTIONEERS.....DEFENDANTS/RESPONDENTS

RULING

1. This matter was coming up for highlighting of submissions today. However, M/s Wambani, counsel holding brief for Mr Makambo, counsel for the Defendant/Respondent has been instructed to apply for an adjournment on the ground that the Respondent's counsel was served with written submissions and a further affidavit on 24.8.2018 which was a week after the stipulated period which had been given by the court and he required leave to file a supplementary affidavit so as to respond to the new issues which had been raised in the further affidavit within 7 days.

2. Mr. Kenga objected to this argument that there was no agreement in the e-mail communication he received from Mr Makambo that the matter be adjourned. He also argued that the Respondent, having been given 14 days leave to file and serve their written submissions, on 1.8.2018, have had sufficient time within which they would have complied. And that even if they were served with submissions. On 24.8.2018, this brings the period to 25 days within which they would have responded to the submissions and further affidavit. Mr Kenga further argues that the Respondent have no right under the provisions of Order 51 of the Civil Procedure rules to file a supplementary affidavit.

3. In considering the application by the Respondent's counsel and the objection by the applicant's counsel, I have considered the issues in question and find that there is need for substantive justice to be arrived at by this court. This can only be done if parties are granted an opportunity to address the issues in the case that is before court. I note that there has not been no inordinate delay in this case.

4. Also, on the issue of the Respondent being granted leave to file a supplementary affidavit, the same is denied. Instead, the Respondent is granted 7 days leave to file and serve their written submissions within which the new issues alleged to have been raised in the further affidavit will be addressed. Failure to file and serve the said written submission by the Respondent, will cause the Respondent to lose their right to do so.

Mention on 23.10.2018 for highlighting. The interim orders be and are hereby extended.

Ruling read, signed and dated this 18th day of September, 2018.

LADY JUSTICE D. O. CHEPKWONY