

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT NO 105 OF 2013

KAYDEE QUARRY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

BAILEYS ROCKTECH LIMITED.....DEFENDANT/RESPONDENT

RULING

1. The matter was coming up for hearing of the Notice of Motion dated 3.11.2016.

The applicants/Plaintiff's counsel M/s Adagi indicated that she was ready to proceed.

2. Mr. Kiarie, counsel for the Director of 1st Defendant stated that he was not ready to proceed because he had not been able to get instructions from his client, the 1st defendant and gave a number of reasons for this. He then pleaded for one more chance to enable him seek instructions and file a reply to the application so that the matter could proceed. He offered to pay costs to the applicant.

3. M/s Adagi opposed this application on the ground that the matter being a 2013, was old, the application which was dated 3.11.2016 having been served upon the defendants on 10.11.2010. This had been conceded to by the counsel for the Director of the 1st defendant. She however, urged the court to dispense with the attendance of the 2nd defendant if it was inclined to grant the 1st defendant's counsel the adjournment sought since they were facing a predicament in serving the 2nd Director for the Defendant who is out of country.

4. I have considered the submissions by both counsel and allow the application for an adjournment by the counsel for the 1st defendant's Director on the following terms:

1. That the same is a last adjournment for the defendant.

2. The counsel for 1st Director of Defendant is granted 20 days leave to file and serve a replying affidavit to the application dated 3.11.2016.

3. The plaintiff/Applicant to file a further affidavit within 7 days of being served, if need be.

4. The matter to proceed for hearing on the date scheduled notwithstanding the attendance of either party.

5. Hearing of the application dated 3.1.2010 on 23.10.2018.

6. Costs to the plaintiff/applicant by the defendant.

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

LADY JUSTICE

D. O. CHEPKWONY