



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 372 OF 2014 (O.S.)

IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 LAWS

OF KENYA

AND

IN THE MATTER OF ENFORCEMENT OF A PROFESSIONAL

UNDERTAKING MOSES MUCHOKI, CHARLES NJENGA

T/A MUCHOKI, KANGATA NJENGA & CO. ADVS. ::::::::::: PLAINTIFF

VERSUS

JULIET THEURI

T/A J. M. THEURI & CO. ADVS. ::::::::::: DEFENDANT

RULING

1. I have carefully considered the **Originating Summons** filed in court on **27th August 2014**. Although the Originating Summons is brought under Order 52 Rule 7 (1) (b) and (2) of the Civil Procedure Rules, I am inclined, having considered the said Originating Summons, to give direction under Order 37 Rule 19.
2. It is clear that the Originating Summons seeks to enforce the terms of undertaking given by one advocate to another. Yet, it is also clear that there are issues relating to time, and time being of essence, and issues relating to one bank official verbally undertaking that they would excuse the Defendant for any accrued interests on account of delay since delay was partly occasioned by the party now seeking to enforce the undertaking.
3. In my view, the Originating Summons cannot be determined only on the basis of affidavit evidence. Under Order 37 Rule 19 this court has the power to direct that these proceedings do continue as if the cause had begun by filing a Plaint. In that regard, I make the following orders:-
 1. ***This cause of action shall continue as if it had been began by filing a Plaint.***
 2. ***The originating summons and affidavits filed shall stand as pleadings.***
 3. ***The parties shall be at liberty to file additional affidavits within 10 days from the date hereof.***

4. *Costs shall be in the cause.*

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 2ND DAY OF NOVEMBER 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Adira holding brief for Njenga for the Plaintiff

No appearance for the Defendant

Teresia – Court Clerk