



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ELC. CASE NO. 210 OF 2013**

**SAGALLA RANCHERS LTD. ....PLAINTIFF/RESPONDENT**

**- V E R S U S -**

**IZERA ENTEPRISES LTD ..... 1ST DEFENDANT/APPLICANT**

**GITONGA WAMBUGU KARIUKI ..... 2ND DEFENDANT/APPLICANT**

**RULING**

The applicant filed this application praying that the suit herein be struck out with costs as the same is an abuse of the process of the court.

The basis of the application is that the plaintiff is a limited liability company and that the suit was filed without the resolution of the Board of Directors of the company authorizing Mr. Eliud Mwamunga to swear a replying affidavit to the plaintiff.

The issue was raised in paragraph 3 of the statement of defence filed in court on 18th October 2013. The applicant filed this application on 16th December, 2013 and served the same on the plaintiff's advocate on 20th January 2014. No replying affidavit or grounds of objection were ever filed or at all.

Mr. Gikandi learned counsel urged the court to strike out the plaintiff with costs as the filing of a resolution of the Board of Directors to file the suit and to swear a verifying Affidavit is a legal requirement. This issue was raised in the defence filed in court in October 2013. It was argued that the plaintiff will not be prejudiced as they can always file another suit.

Miss. Kariuki Learned Counsel who held brief for the plaintiff's advocates had nothing to say.

This application is unopposed and is allowed as prayed.

**Dated and delivered in open court at Mombasa this 3rd day of**

**June, 2014.**

**S. MUKUNYA**

**JUDGE**

**3.6.2014**

In the presence of:

Mrs.Kariuki advocate holding brief for Mr. Gikandi Advocate for the defendant.

Mr. Kinoti Kibe Advocate for the plaintiff.