



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION

HCC NO. 1830 OF 2001

GATHENGE ENGINEERS & ELECTRICAL LIMITED.....PLAINTIFF

-Vs-

THE POSTAL CORPORATION OF KENYA.....DEFENDANT

RULING

1. The application before the court is a Notice of Motion dated 16th June 2014 filed by the Plaintiff under Order 2 Rule 10, Order 51 Rules 1, 3 and 4 of the Civil Procedures Rules 2010, Sections 3A and 63 (e) of the Civil Procedure Act, Chapter 21 of the laws of Kenya; and all enabling provisions of law.
2. The application seeks the following Orders:
 - a. That this application be certified as urgent and service thereof dispensed with and be heard *ex parte* in the first instance.
 - b. That the Honourable court be pleased to order the Defendant/Respondent to file with the Honourable court and serve the Plaintiff/Applicant herein within 14 days and or such other period as the Honourable court shall direct, the particulars of the Statement of Defence dated 11th January 2002 as requested by the Plaintiff/Applicant in the Request for particulars dated 12th April 2013, failing which the Statement of Defence dated 11th January 2002 do stand as dismissed and or struck out with costs.
 - c. That the Honourable court be pleased to make such other Order(s) and or give such other Direction(s) as it may in the interest of justice and expediency deem fit and necessary in the circumstances.
 - d. That the costs of this application be provided for.
3. The application is based on the following grounds that:
 - a. The Plaintiff/Applicant (through its Advocates on record) has requested the Defendant/Respondent (through its Advocates on record) for the supply of particulars (as contained in the Plaintiff's/Applicant's Request for Particulars dated 12th April 2013) of the latter's Statement of Defence dated 11th January 2002 (hereinafter referred to as "the Defence").
 - b. Despite reminder, the Defendant/Respondent and or its Advocates on record have refused, neglected and or failed to provide and or file and or serve the particulars of the Defence.
 - c. The particulars requested by the Plaintiff/Applicant herein in the Request for Particulars dated 12th April 2013 are necessary for the Plaintiff/Respondent to have sufficient information from the Defendant/Respondent on what is going to be proved by the latter and thus enable the

Plaintiff/Applicant to prepare its case. The said requested particulars are also necessary so as to prevent litigation by ambush as well for the conduct of the trial of the suit herein in a fair and open manner.

d. The application ought to be granted in the interests of equity and justice.

4. The application is supported by Affidavit of **KIBANYA NGURU** dated **16th June 2014**. The Affidavit mainly expands upon the above said grounds.

5. The application together with the Notice of Hearing date was served upon the Defendants advocates and was received by **M/S WACHAKANA & COMPANY ADVOCATES** for the Defendant on 24th July 2014. The Defendant/Respondent have not responded to the same and, so were not in court on 22nd September when this application was heard in their absence.

6. I have considered the application and affidavit in support. I have also looked at annexure "**KNI**" to the Supporting Affidavit of **Mr. KIBANYA**. This is the Request For Particulars dated 12th April 2013 served upon the Defendant's counsel on 25th April 2013. I have also looked at annexure "**KN2**" to the said Affidavit. This is a letter dated 13th May 2013 addressed to the advocate of the Defendant. The letter was received by the said advocates on 14th May 2014. The letter was asking the said advocate to respond to the Request For Particulars aforesaid.

7. It is clear to me that the Defendant is not willing to provide the said particulars. The Defendant has also refused to provide reasons why it is unable or willing to comply with the request. It is therefore within the rights of the Plaintiff to bring this application.

8. Since the application is not opposed, and since in my view it is merited, I allow the application as per prayer No.2 thereof. I also give cost of this application to the Plaintiff/Applicant.

Orders accordingly.

Dated, Read and Delivered at NAIROBI this 3rd Day of October 2014.

E.K.O OGOLA

JUDGE

Present:-

Kibanya for Plaintiff/Applicant

Absent for Defendant/Respondent

Teresia – Court clerk