

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

Civil Suit 106 of 2010

ISAAC RODROTPLAINTIFF

VERSUS

CCREDO AG

HAS JUERGEN LANGER

ZAHRA LANGER

SALAMA BEACH HOTEL LTD.....DEFENDANTS

R U L I N G

1. A brief recap of the background to the application dated 17th June, 2011 is necessary. An *ex parte* judgment was entered against the 1st, 2nd and 3rd defendants by the Deputy Registrar on 23rd November, 2010, while the suit against the 4th defendant had previously been withdrawn.

2. On 1st November, 2011 the 1st to 3rd defendants through their lawyer Mr. Kenyariri applied to set aside the said judgment. The application, opposed by plaintiffs represented by Mr. Munyithya, was canvassed before me on 9th November, 2011. Ruling thereon was delivered on 9th December, 2011, in the presence of Messrs Kenyariri and Mr. Mutugi for the parties. The substance of the ruling is captured in paragraph 13 which states *inter alia*:

“The ex parte judgment herein is set aside. On condition that the defendants file and serve a fresh defence within seven days of today’s date...”

3. The reference to a ‘fresh’ defence statement alludes to the previous defence and counterclaim irregularly filed by the defendants after judgment had already been entered. The same is dated stamped 20th May, 2011. In compliance with the court’s order of 9th December, 2011, the defendants filed a fresh defence and counterclaim on 13th December, 2011.

4. In light of the foregoing, the plaintiff’s application dated 17th June, 2011 which sought to have the “old” irregular defence and counterclaim struck out has clearly been overtaken by events, as the defence and counterclaim dated 17th May, 2011, the subject matter thereof ceased to have any life following my ruling on 9th December, 2012. Therefore the application dated 17th June, 2011 has no basis and must be dismissed. Each party will bear its own costs.

5. In conclusion, I note that this suit is replete with interlocutory applications which have taken up the proceedings over a period of close to two years. The only prudent cause that commends itself to me in keeping with the provisions of Section 1A and 1B of the Civil Procedure Act is to direct that the parties should now move with dispatch to set down the main suit for hearing.

Delivered and signed at Malindi on this **2nd** day of **October, 2012** in the presence of Mr. Kenyariri for Defendant, Mr. Shujaa holding brief for Mr. Munyithya for the plaintiffs.

C. W. Meoli

JUDGE