

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 1271 of 2004

**DYNAMIC INSTITUTE OF MANAGEMENT &
ACCOUNTANCY (DIMA) LTD..... PLAINTIFF/RESPONDENT**

VERSUS

APOLLO INSURANCE CO. LTD DEFENDANT/APPLICANT

RULING

Before the court is an application dated 18th May, 2007 brought by the Defendant/Applicant by way of a Chamber Summons dated 18th May, 2007, under the provisions of Order XXXV Rules 1 (a) 2, 8 & 9 of the Civil Procedure Rules.

The application is for summary Judgment to be entered against the Plaintiff for **Kshs.23,736,717.50/=** as prayed for in the counterclaim together with costs of the suit and interest and costs of the application.

The Plaintiff/Respondent opposes the application. It has filed Grounds of Opposition and a Replying Affidavit both dated 22nd November, 2007.

The suit herein arises out of a tenancy between the parties. The Defendant/Applicant was the Landlord whereas the Plaintiff/Respondent the tenant. The claim by the Defendant/Applicant is allegedly in respect of rent arrears, mesne profit and costs of repairs and renovations.

The Plaintiff/Respondent on their part contend that there is a dispute as to the period of occupation, rent payable, mesne profit, service charge and the amount claimed for repairs and renovations.

I have considered the pleadings on record and submissions by both counsels.

It is clear to me from the evidence adduced by the parties herein that the matter is protracted. The Defendant's claim has been disputed by the Plaintiff more so the period of the tenancy, mesne profits and the costs of repair and renovation which form part of the claimed sum of **Kshs.23,736,717.50/=** I find that issues raised in the defence for the counterclaim are issues triable at full hearing and not in a summary manner based on affidavits. In my view this is a matter best suited for full hearing.

I therefore decline to grant the summary Judgment and dismiss the application with costs.

Dated and delivered at Nairobi this 7th day of July, 2009.

ALI- ARONI

JUDGE