



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**CIVIL CASE NO. 95 OF 2016**

**BONFACE KATANA KILAVERI.....PLAINTIFF**

**-VERSUS-**

**AFRICAN MARINE & GENERAL ENGINEERING**

**COMPANY LIMITED.....DEFENDANT**

**RULING**

1. The ruling herein is purely an administrative action. The plaintiff filed an application seeking orders of temporary injunction under Order 40 dated 6<sup>th</sup> May 2016 under certificate of urgency. I did not grant any ex parte orders but gave directions that it be given date on priority and be served upon the Respondent. Upon being served with this application, the Respondent also filed a counter application dated 25<sup>th</sup> May 2016 the provisions mainly of Section 6 of the Civil Procedure Act.

2. The plaintiff's advocate submit that their application should be heard first since this Court had made an order that it be heard on priority. The defendant thinks otherwise that their application should be heard first since they are seeking orders to strike out and or to stay the suit.

3. I have perused the two applications and the submissions filed therein. On the face of it, the Respondent seeks to strike out the suit herein or stay it because of the existence of another suit. I am of the considered view that this application should be heard first as its success or otherwise would determine whether the plaintiff's application and suit should be heard or be stayed. The order of priority made on 9.5.16 when the application was placed before me is to be interpreted to mean the urgency of the application but does not infer that if other issues are raised at the inter partes hearing this Court cannot review those orders appropriately.

4. Because of the nature of the orders sought by the Respondent, I do order that their application shall be prosecuted first. The plaintiff is therefore granted leave to file a response to it within 14 days of the date of this ruling. Thereafter parties to exchange skeleton submissions to be highlighted on the date given during the delivery of this ruling. I will then give directions on the way forward to the plaintiff's application on the date the ruling on the application of 26.5.2016 is read.

**Dated and delivered at Mombasa this 25<sup>TH</sup> day of November 2016.**

**A. OMOLLO**

**JUDGE**