



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 786 OF 2002**

**LABELLE INTERNATIONAL LIMITED.....1<sup>ST</sup> PLAINTIFF**

**TEJINDER KAUR BIRDI.....2<sup>ND</sup> PLAINTIFF**

**-VERSUS-**

**FIDELITY COMMERCIAL BANK LIMITED ....1<sup>ST</sup> DEFENDANT**

**ISMAEL M.H MAWJI.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

1. The Application before this Court is the Notice of Motion dated **7<sup>th</sup> August 2014** and filed in Court on **15<sup>th</sup> August 2014**. It is expressed to be brought under Sections 1A, 1B and 3A of the Civil Procedure Act as well as Order 51 rule 1 of the Civil Procedure rules. The Application is also expressed to be brought pursuant to the orders of this Court given on 31<sup>st</sup> July 2014.
2. The Application is seeking for one main order that leave of this Honourable Court be granted to the Plaintiffs to file a supplementary affidavit to their Notice of Motion dated 30<sup>th</sup> May 2014 in terms of the annexed draft marked "A".
3. The Application is based on the grounds stated on the face of the Application and is supported by the affidavit of the 2<sup>nd</sup> Plaintiff sworn on 7<sup>th</sup> August 2014.
4. The 2<sup>nd</sup> Plaintiff avers that the Defendants' Replying affidavit filed on 14<sup>th</sup> July 2014 raises new issues touching on the Plaintiffs' application dated 30<sup>th</sup> May 2014. Therefore the Plaintiffs would wish to reply to the same. It is the 2<sup>nd</sup> Plaintiff's assertion that the matters the Plaintiffs seek to bring to the Court's attention will aid the Court to make a just decision in the circumstances of the current case.
5. It is the Plaintiffs case that the Defendants do not stand to suffer any prejudice that cannot be compensated by way of costs if leave is granted to file the supplementary affidavit.
6. In opposition to the Application the Defendants filed a Replying affidavit on **29<sup>th</sup> September 2014**. The Replying affidavit was sworn on 25<sup>th</sup> September 2014 by STELLA MBULI, described as the 1<sup>st</sup> Defendant's legal manager.
7. The Legal manager avers that the Plaintiffs' Application ought to be struck out as an abuse of the Court process. According to the deponent the current application seeks to bring in issues which are not related to the issues in contention on the Plaintiffs' Application dated 30<sup>th</sup> May 2014. It is the deponent's assertion that the issues raised by the Plaintiff in the supplementary affidavit have been raised in the main application filed by the Plaintiffs.

8. The legal manager further avers that the Replying affidavit of the Defendants relied on the annexures appearing on the Plaintiffs' supporting affidavit. In that case it is the Defendants' contention that it is erroneous and misleading for the Plaintiff's to state that the Replying affidavit has raised any new issues.
9. It is the Defendants' case that the Plaintiffs are not keen on finalizing the issues on this matter. It is further the Defendants' case that the filing of infinite applications shall delay the process of the case and serve to ensure that justice is protracted.
10. On 31<sup>st</sup> July 2014, this Court directed that the Plaintiffs seek leave formally to file their supplementary affidavit. The Plaintiffs have complied with the same.
11. I have perused the said affidavit and it is plain that there are some additional information to that which the Plaintiffs provided on the main application and supporting affidavit. In particular with regard to the valuation of the 'Ngara' Property. I see no prejudice that the Defendants will suffer. In any case the Defendants are at liberty to file response to the same if need be.
12. Therefore, it is in the best interest of justice that leave be granted to the Plaintiffs to file the supplementary affidavit.
13. In light of the above, the Notice of Motion dated **7<sup>th</sup> August 2014** and filed in Court on **15<sup>th</sup> August 2014** is hereby allowed in the following terms:-

- a. ***Leave is hereby granted to the Plaintiffs to file the supplementary affidavit in terms of the Annexed draft marked "A" within 7 working days from the date of this ruling.***
- b. ***The Supplementary affidavit will be deemed duly filed only upon payment of the requisite fees.***
- c. ***The Defendants are at liberty to file their response to the supplementary affidavit within 7 days of service.***
- d. ***There is no order as to costs.***

Orders accordingly.

**READ, DELIVERED AND DATED, AT NAIROBI THIS 19TH DAY OF DECEMBER 2014**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

No appearance for the Plaintiff

Were for the Defendants

Teresia – Court Clerk