



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL & TAX DIVISION – MILIMANI**

**WINDING UP CAUSE NO. 10 OF 2010**

**IN THE MATTER OF THINDIGUA COMPANY LIMITED**

**AND**

**IN THE MATTER OF THE COMPANIES ACT CAP 486 LAWS OF KENYA**

**FRANCIS GIKONYO.....PETITIONER/  
APPLICANT**

**VERSUS**

**THINDIGUA COMPANY  
LIMITED.....RESPONDENT**

**RULING**

The application before the court is brought by a notice of motion dated 23<sup>rd</sup> March, 2011, and taken out under Section 3A of the Civil Procedure Act and all other enabling provisions of the law. The petitioner/applicant prays for orders that –

- (1) This Honourable court be pleased to vary and/or set aside the consent order dated 6<sup>th</sup> September, 2010 and order that the petition proceeds to hearing.**
- (2) In the alternative, this Honourable court be pleased to enter the said consent as final order of this cause, effectively winding up the respondent.**

**(3) The costs of this application be provided for.**

The application is supported by the annexed affidavit sworn on 23<sup>rd</sup> March, 2011 by Njugi B Gachogu, an Advocate of the High Court of Kenya.

By an affidavit sworn by Benard M Musyoka, a duly authorized court process server, the deponent deposes that the respondent's Advocates were served with a notice to the effect that the matter was coming up for hearing on 12<sup>th</sup> May, 2011. The hearing notice was served on the respondent's Advocates on 29<sup>th</sup> March, 2011. The said Advocates' rubber stamp shows that they received the said letter at 12.50 pm.

When the matter came for hearing *inter partes*, Mr Njugi appeared for the applicant while the defendants did not attend court at all. Being satisfied that the respondents were served in sufficient time to attend court, the matter proceeded *ex parte*.

It is instructive that the respondents did not file any replying affidavit or grounds of opposition. On the scheduled hearing date, they did not attend court. On that basis, Mr Njugi for the applicant told the court that he wished to abandon prayer (2) and sought prayer (1).

It is clear from this background that the application was not opposed and the applicant was thereby entitled to the orders as prayed. I accordingly set aside the consent order dated 6<sup>th</sup> September, 2010 and order that the petition herein do proceed to hearing in terms of prayer (1).  
It is so ordered.

Costs in the cause.

**DATED** and **DELIVERED** at **NAIROBI** this 28<sup>th</sup> day of July, 2011.

**L NJAGI**

**JUDGE**