



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI COMMERCIAL COURTS**

**CIVIL CASE NO. 478 OF 2003**

**CONSOLIDATED BANK OF KENYA LIMITED.....PLAINTIFF**

**- VERSUS -**

**PAN AFRICAN INSURANCE CO. LIMITED.....DEFENDANT**

**RULING**

On 30<sup>th</sup> November 2010 an order of this court was issued under Order 16 Rule 6 requiring the Registrar of Companies to provide for inspection by the firm of Oraro & Company Advocates the file relating to APA Insurance Company Ltd. That order was extracted and in spite of being served upon the Registrar, there has been no compliance. The inspection of that file is prerequisite to the listing of the application for substitution dated 9<sup>th</sup> July 2009.

Mr. Makori for the Plaintiff now orally applies under Order 16 Rule 6 for summons against the Registrar of Companies to produce the said any and all documents relating to the alleged merger between PAN African Insurance Co. Ltd. and Apollo Insurance Co. Ltd. This application is opposed by Mr. Kamau holding brief for Mr. Mege on the grounds that the application should be formally made, but he concedes that there is absolutely no prejudice to be suffered by the Defendant should the application be granted.

I have looked at Order 16 Rule 6. There is nothing that requires the application to be formal. In any event, the demand for formal application seems to me to be a delaying tactic which is unnecessary. Under Sections 3A and 3B of the Civil Procedure Act and under Article 159 of the Constitution of Kenya, it is clear that this application would be granted, for, they empower this court to dispense justice without due regard to technicalities and also clothe this court with the necessary discretionary powers.

I therefore grant the application and herewith make orders as follows:-

**1.** *The Registrar of Companies to be and is hereby compelled to produce for inspection of Messrs Oraro & company Advocates for the Plaintiff the file relating to APA Insurance Company Limited, and further does furnish to the said advocates any documents, evidence and information in the possession of the Registrar relating to the alleged merger between PAN African Insurance Co. ltd. and Apollo Insurance Company Limited.*

**2.** *The Registrar of Companies is hereby ordered and directed to comply with this order within seven (7) days of the service of this order upon the Registrar of Companies.*

3. *If the Registrar of Companies fails to comply within the above stated time Notice to Show Cause proceedings to issue against the Registrar of Companies.*

4. *A copy of this ruling together with the extracted order shall be served upon the Registrar of Companies by the Applicant.*

It is so ordered.

**DATED, READ AND DELIVERED AT NAIROBI THIS 1<sup>st</sup> DAY OF NOVEMBER 2011.**

**E. K. O. OGOLA**  
**JUDGE**

**PRESENT:**

..... *for the Plaintiff*

..... *for the Respondent*

*Irene - Court Clerk*