

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 326 of 2008

RUTH NJERI KUNIARA..... PLAINTIFF

VERSUS

INDUSTRIAL & COMMERCIAL DEVELOPMENT CORPORATION....1ST DEFENDANT

WATTS ENTERPRISES.....2ND DEFENDANT

ANTONY N. NGUNJIRI.....3RD DEFENDANT

RULING

Before me is the plaintiff's application purportedly made under **Order XLIV Rule 5** of the **Civil Procedure Rules** and **Sections 95 and 3A** of the **Civil Procedure Act**. The plaintiff seeks to be granted extension of time by which to file an amended plaintiff in terms of the draft amended plaintiff annexed to the application. The plaintiff states that on 28th October 2009, the court granted her leave to file an amended plaintiff within seven (7) days of the Order. The plaintiff's then advocate filed the amended plaintiff on 13th November 2009 which it is common ground was outside the period stipulated by the court. The plaintiff explained that it was due to mistake by her then counsel that the amended plaintiff was not filed in time. It is on that account that the plaintiff prays that the court extends the period upon which she may file the amended plaintiff. The plaintiff urged the court not to punish her for the mistake of her then counsel. The application is opposed. The 1st and 3rd defendants filed grounds in opposition to the application. The said defendants were of the view that the plaintiff had not placed before the court any valid reasons that would persuade the court to rule in her favour. They urged the court to dismiss her application with costs.

At the hearing of the application, I heard oral submissions made by Mr. Kamwendia for the plaintiff, Mr. Ogado for the 1st defendant and Mr. Koech for the 3rd defendant. The plaintiff was granted leave by this court on 28th October 2009 to amend her plaintiff. The plaintiff was required to file the amended plaintiff within seven (7) days of the order of the court. The plaintiff did not file the amended plaintiff within the seven (7) days directed by the court but did so after sixteen (16) days. Instead of the plaintiff seeking the validation of the amended plaintiff that had been filed out of time, the plaintiff has gone ahead to file a completely different draft amended plaintiff that has got no relation whatsoever with the amended plaintiff that was filed out of time. I am in agreement with the submissions made on behalf of the defendants that the only issue that this court can consider on the basis of application before court is the amended plaintiff that was filed out of time without leave of the court. In the premises therefore, I hereby grant the plaintiff's application for extension of time. I direct that the amended plaintiff filed by the plaintiff on 13th October 2009 be deemed to be properly filed. If the same has not been served, the plaintiff is ordered to serve the same within seven (7) days of today's date. If the defendants wish to file any response to the said amended plaintiff, they are at liberty to do so within fourteen (14) days after service.

If the plaintiff is desirous of further amending her plaintiff, she is at liberty to seek the leave of the court upon filing an appropriate application under the **Civil Procedure Rules**. The draft amended plaintiff annexed to the plaintiff's application dated 28th November 2009 is of no evidential value as it was not the same amended plaintiff that the plaintiff filed after she was granted leave by the court. The defendants shall have the costs of the application.

DATED AT NAIROBI THIS 22ND DAY OF MARCH 2010.

L. KIMARU
JUDGE