



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Civil Case 36 of 2008**  
**RISPAR KERUBO ONSARE & ANOTHER ..... PLAINTIFFS**  
**VERSUS**

**CREDIT BANK LIMITED ..... DEFENDANT**  
**R U L I N G**

By this application, the plaintiffs seek an order that time within which to file an amended plant by the plaintiffs be enlarged or extended and the plaintiffs be allowed to file their amended plaint out of time. The application is brought by a Notice of Motion under **Sections 3, 3A and 95** of the **Civil Procedure Act**, and **Order XLIX Rule 5** of the **Civil Procedure Rules**.

The reasons given for the delay in making the application are that the applicants were served by the defendant just before the commencement of the Christmas Vacation, and reopened on 11<sup>th</sup> January, 2010. After the reopening, Counsel for the plaintiffs fell sick, thereby making it difficult for them to file the amended defence on time.

The respondent has not filed any replying affidavit or grounds of opposition. At the hearing, Mr. Ashitiva for the respondents told the court that basically, he was not opposed to the application. However, he had written a letter applying for judgment, but the judgment had not yet been entered. Since it has not yet been entered, it would not be fair to deny the applicants a chance to prosecute their own application which has been set down for hearing.

On account of the foregoing, and seeing that the application for extension for time to file the amended plaint out of time is not opposed, order 1 of the application by Notice of Motion dated 3<sup>rd</sup> February, 2010 is hereby granted as prayed.

Costs in the cause.

**DATED** and **DELIVERED** at NAIROBI this 15<sup>th</sup> day of April, 2010.

**L. NJAGI**  
**JUDGE**