

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 103 of 2009

NGURUMAN LIMITED.....PLAINTIFF

VERSUS

OLDONYO LARO ESTATE LIMITED.....DEFENDANT

RULING

Following the defendant's application for leave to amend its defence and counter-claim dated 19th May 2010, on 25th May 2010 the parties recorded a consent allowing the defendant to file and serve its amended defence and counter-claim by 3rd June 2010. It filed it on 7th and on 8th June 2010 when the suit was supposed to be heard, the defendant applied under **Section 95** of the **Civil Procedure Act** as well as **Orders 49** and **34** of the **Civil Procedure Rules** for extension to deem the amended defence and counter-claim as filed in time. The application is based on the ground that due to the change in the mode of payment of court fees, the court refused to take counsel for the defendant's cheque and by the time they arranged for cash, the court had closed.

The plaintiff cannot hear of that. It sees this application as one of the defendant's delaying tactics. Mr. Nowrojee for the plaintiff raised a preliminary objection and argued the application contravenes **Section 1A** of the **Civil Procedure Act**; that granting this application will not only set aside the said consent order but will also enable the defendant to go round the order of 8th March 2010 granting it the last adjournment and that the defendant having not filed its list of documents was in any case not ready to proceed with the hearing.

Having considered the matter, I agree with Mr. Nowrojee that the defendant does not appear keen to go on with the hearing of this case. On 8th March 2010 when the case came up for hearing, the defendant sought for an adjournment on the ground that the leading counsel was engaged in the Court of Appeal. On securing an adjournment it applied to amend its defence and counter-claim which it was not even able to file in time. In the interest of justice I allow this application and deem the defence and counter-claim filed on 7th June 2010 as duly filed in time. Parties are warned that the court will not entertain applications for adjournment. Any party who will not have completed discovery and served the other side with copies of the documents it wishes to produce within 30 days of the date hereof will not be allowed to produce or even refer to any documents. The defendant shall have the costs of this application.

DATED and DELIVERED at Nakuru this 30th day of June, 2010.

D. K. MARAGA

JUDGE.