



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI
Civil Case 100 of 2005

ABBAS LALI AHMED.....PLAINTIFF

VERSUS

LUCIANO MORINI & 3 OTHERS.....DEFENDANT

R U L I N G

By an application by way of Notice of Motion dated 25th July 2007, pursuant to the provisions of Order XLIX Rule 5 of the Civil Procedure Rules, the applicant seeks orders:

- 1) *That the honourable Court do extend the time in which to serve the amended defence and amended counterclaim upon the respondents herein.*
- 2) *That the costs of this application be **in the cause**.*

The application is based on the grounds:-

- a) ***That when the application to amend the defence and counterclaim was allowed, it was ordered that the same be filed and served within even (7) days from the date of the order.***
- b) ***That upon presenting the same for filing, fees was assessed at Kshs. 70,000/=***
- c) ***That both the 1st and 2nd defendant/applicants were then away in Italy and it was not possible to pay for the filing fees in time .***
- d) ***That the amended defence and amended counterclaim were then filed on the 27th June 2007 but could not be served on the same date it being the last day as ordered.***
- e) ***That no prejudice will be occasioned to the respondents if they are served out of time.***

The application is predicated upon the annexed affidavit of Sergio Alvaro Mida sworn on the 25th day of July 2007.

The applicant adopted wholly the affidavit in support of the application. It was argued on behalf of the applicant that the application to amend the defence and counterclaim dated 3rd May 2007 was heard and allowed on 20th June 2007. It was ordered that the same be filed and served within 7 days from the date of the order.

That on presenting the amended plaint and counterclaim for filing the court Registry assessed the filing fees at Shs. 70,000/=. At that point in time the second defendant/applicant was way in Italy. The

advocate for the applicant was not able to obtain the filing fees until 27th June 2007.

That the amended defence and amended counterclaim have already been filed, however the same cannot be served as time to do so elapsed 7 days after the order of 20th June 2007 hence this application.

The respondent neither filed replying affidavit nor grounds of opposition. At the hearing the respondent conceded this application.

I have on my part analysed the entire application and the relevant law and is convinced that the orders sought in the application are deserved on the evidence available.

Accordingly, I grant the application in terms of prayer 1 and 2. The amended defence and counterclaim shall be served within 7 days of this order.

Dated and delivered at Malindi this 7th day of September 2007.

N.R.O.OMBIJA

JUDGE

Mr.Okuto } for 1st and 2nd defendant.

Mr.Michira for Kalume Katana } for Morini.