



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**Civil Case 522 of 2004**

**AKIBA BANK LIMITED.....PLAINTIFF**

**VERSUS**

**REKHA CHANDIDAS.....1<sup>ST</sup> DEFENDANT**

**GAUTAM CHANDIDDAS.....2<sup>ND</sup> DEFENDANT**

**RULING**

I have before me an application for one primary order that the time ordered for serving the defendant with answers to particulars (a) – (f) contained in the defendant’s Request for particulars dated 23.8.2005 be extended to 12.4.2007. The application is by the plaintiff.

The main reasons for the application as expressed on the face of the application are that:-

- (a) Pursuant to the ruling given by Hon. Lady Justice Mary Kasango in this suit on 19.2.2007, the plaintiff was ordered to provide to the defendant particulars (a) – (f) contained in the defendants’ Request for Particulars dated 23.8.2005 within 14 days.
- (b) The plaintiff had to go through all its records for the period 1999 to 2003 to try and obtain answers to the particulars sought which exercise has taken the plaintiff longer than the 14 days ordered by the court. It was not until 11.4.2007, that the plaintiff was able to provide answers to the particulars as sought by the defendants.
- (c) That the defendants have already been supplied with the particulars sought the same having been served on the defendants’ advocates on 12.4.2007.
- (d) That the defendants will not be prejudiced if the time to serve the answers is extended.

The application is supported by an affidavit sworn by one Kibet Chebii, the plaintiff’s Legal Officer. The said affidavit is an elaboration of the grounds for the application.

The application is opposed on the basis of Grounds of Opposition filed by counsel for the defendants. There is no replying affidavit.

The application was canvassed before me on 18.9.2007 by Ms Malik Learned Counsel for the plaintiff

and Ms Thuita Learned counsel for the defendant. Counsel reiterated the positions taken by their clients to the said affidavit and the grounds of opposition respectively.

I have considered the application, the supporting affidavit the grounds of opposition and the submissions of counsel. Having done so, I take the following view of the matter. Order XLIX Rule 5 of the Civil Procedure Rules provides as follows:-

**“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: .....**”

The plaintiff was required to furnish particulars (a) – (f) in the Request for Particulars dated 23.8.2005 within 14 days of the order. That order was made on 19.2.2007. The plaintiff’s Legal Officer has sworn that in addition to seeking stay of execution of the order of Kasango J in the Court of Appeal which stay was not granted, the plaintiff carried out a search of its records for the period 1999 – 2003 with a view to providing answers to the defendants’ said Request. The said Legal Officer has further deponed that having gone through the plaintiff’s records the plaintiff furnished its advocates with the said particulars on 11.4.2007 which were then served upon the advocates for the defendant on 12.4.2007. In the premises, the plaintiff was not able to comply with the order of Kasango J aforesaid within the appointed time. There is also a deposition that the extension sought will not in any way prejudice the defendants.

This application was then filed on the same 12.4.2007. The delay involved is therefore just about 1 ½ months. In the circumstances, I do not think that that delay is inordinate, unreasonable or inexcusable. The defendants filed no replying affidavit. They have therefore not demonstrated that the extension of time sought will prejudice them in any way.

In Trust Bank Ltd – vs – Amalo Company Ltd [2003] 1 EA 350 the court of Appeal held as follows:-

**“1. The principle which guides the court in the administration of justice when adjudicating on any dispute is that where possible, disputes shall be heard on their own merit (Essenji and another – vs – Solanki [1968] EA 224 followed).**

**The spirit of the Law is that as far as possible in the exercise of judicial discretion, the court ought to hear and consider the case of both parties in any dispute in the absence of any good reason for not doing so.**

**The appellant had the right to be heard on the documents he had put before the court and were on record.”**

On the material availed to the court and on the authority of the decision of the Court of Appeal in Trust Bank Ltd – vs – Amalo Company Ltd supra I find that the plaintiff has established a case for extension of time to comply with the order of Kasango J. In the premises, the plaintiff’s application dated 12.4.2007 and filed on the same date is allowed in terms of prayer 1 thereof.

The costs of this application will be borne by the plaintiff/applicant.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER, 2007.**

**F. AZANGALALA**

**JUDGE**

**Read in the presence of:-**

Wetende Ms for the plaintiffs.

**F. AZANGALALA**

**JUDGE**

**17/10/07**