

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 284 Of 2003

KOMASSAI PLANTATIONS LIMITED.....PLAINTIFF

VERSUS

BANK OF BARODA (K) LIMITED.....DEFENDANT

R U L I N G

The plaintiff has moved this court by way of a Notice of Motion dated 16th January 2006.

The plaintiff seeks leave of this court to appeal against the ruling of this court delivered on 20th December 2005.

The plaintiff gives the ground for that application as, that it is dissatisfied with the decision of 20th December 2005 and that the said leave is necessary before the proposed appeal can be lodged.

The only opposition to the application was on the basis that the plaintiff's application was beyond the 14 days period set out in Order XLII Rule 1 (3).

In response to defence opposition the plaintiff's counsel relied on order XLIX Rule 3A which provides that from the period of 21st day of December to 6th January, both days included, for the purpose of computation of time, that period would be excluded.

In deed when one considers that provision the plaintiff's application will be regarded to be within time.

However the court has considered the orders upon which the application, the subject of the proposed appeal was based on. The applciaiton was based on Order XXXIX Rule 2A (1) and (2). Order XLII Rule 1 (1) provides that an appeal shall lie as of right from Order XXXIX rules 1,2,4 and 8 amongst others. That means that the plaintiff's appeal was as of right and there was no necessity in filing the present application. Accordingly the plaintiff's application for leave to appeal must fail.

The order of the court is that the application dated 16th January 2006 is dismissed with costs to the defendant.

MARY KASANGO

JUDGE

Dated and delivered this 27th February 2006.

MARY KASANGO

JUDGE