



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
CIVIL CASE NUMBER 91 OF 1998

FIDELITY COMMERCIAL BANK..... PLAINTIFF

VERSUS

WORLDIN TOURS & TRAVEL

LIMITED.....1ST DEFENDANT

R U L I N G

By a notice of motion brought under sections 3A and 100 of the Civil Procedure Act, Order 6A Rules 3 and 5, order 49 Rule 5 of the Civil Procedure Rules seeks the following orders: -

- That the Honourable court does exercise its inherent jurisdiction and issue orders restoring leave to amend the plaint granted on 4th November 2003.
- That the Honourable court be pleased to extend the time by which the plaintiff is deemed to have filed its amended plaint pursuant to restoration of the order of 4th November 2003.
- That the plaintiff be allowed to file its amended plaint within the extended time or as the court may specify. The plaintiff was granted leave to amend its plaint, when that amended plaint was filed, on 14th January 2004, the same was unsigned.

The defendant made an application for the striking out of that amended plaint and the court by its ruling, delivered on 22nd October 2004, struck out that amended plaint.

When the present application came up before me for extension of time to file an amended plaint the defendant had not filed its papers in opposition. On being denied an adjournment the defendant did not respond to the plaintiff's application.

It follows therefore that the plaintiff's assertion in support of the application is unchallenged.

The affidavit in support of the application states that the plaintiff's advocate's clerk, without checking filed the unsigned amended plaint. The said filing was said to have been by mistake.

Since there is nothing to controvert that assertion I find that this is sufficient reason for the court to exercise its discretion under Order 49 rule 5 and extend time for filing the amended plaint. The

court grants the following orders: -

(1) That the court does hereby restore leave to amend plaint granted on 4th November 2003 and does extend the time for filing such amended plaint to be within 7 days from todays date hereof.

(2) The costs of the application dated 2nd December 2004 will be the defendants in any event.

Dated and delivered this 25th day of April 2005.

MARY KASANGO

JUDGE

Read and delivered at Nairobi by Azangalala J, this 25th day of
April 2005.

F AZANGALALA

JUDGE