



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 71 of 2004**

**CREDIT BANK LIMITED.....  
.....PLAINTIFF**

**VERSUS**

**PANACHAND JIVRAJ SHAH & ANOTHER.....  
.....DEFENDANTS**

**R U L I N G**

The reliefs sought in the plaint dated 3<sup>rd</sup> February, 2004 are:-

**“(a) A declaration that on a true and proper construction of the deed of settlement dated 13<sup>th</sup> November, 2001 the Defendants are obliged to pay to the Plaintiff the sum of Kshs.8,000,000/00 in monthly instalments, over 36 months, commencing from the date of execution of the deed of settlement.**

**(b) Costs of this suit.**

**(c) Such other or further relief as this Honourable Court may deem fit to grant.”**

Given the nature of these reliefs, interlocutory judgment was clearly not available under any of Rules 3, 4, 5 or 6 of Order IXA of the Civil Procedure Rules (the Rules). The interlocutory judgment entered on 16<sup>th</sup> July, 2004 against the 2<sup>nd</sup> Defendant is therefore unlawful and must be set aside, notwithstanding that this particular point was not pleaded in the chamber summons dated 4<sup>th</sup> February, 2005. By that application the 2<sup>nd</sup> Defendant sought an order to set aside the said interlocutory judgment upon the ground that summons to enter appearance and copy of the plaint were not served upon him. During arguments the court did invite the learned counsels appearing to address the issue, and they did so.

It also does appear from the affidavit of the 2<sup>nd</sup> Defendant sworn in support of the application that the 2<sup>nd</sup> Defendant has since 1999 been residing in the United Kingdom, and could thus not have been duly served with summons to enter appearance and copy of the plaint within Kenya. The supporting affidavit was sworn by the 2<sup>nd</sup> Defendant in London. The replying affidavit sworn by the managing director of the Plaintiff does not dispute that the 2<sup>nd</sup> Defendant has been living in the United Kingdom since 1999,

though the managing director pleads that he could not have known this.

For the above reasons the interlocutory judgment entered against the 2<sup>nd</sup> Defendant on 16<sup>th</sup> July, 2004 and consequential decree and orders are hereby set aside. The 2<sup>nd</sup> Defendant shall have unconditional leave to defend the suit. He may enter appearance and file defence within twenty-one (21) days of delivery of this ruling. Costs of this application shall be in the cause. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF MAY, 2005.**

H.P.G. WAWERU

JUDGE