

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 428 of 2002

DANIEL K. KARIITHIPLAINTIFF

VERSUS

BAMBURI CEMENTDEFENDANT

R U L I N G

Notice of Motion dated 3/8/05 seeks orders to extend time for Applicant to lodge and serve the amended plaint and that the amended plaint filed on 13/1/2005 be deemed to have been served within time.

The delay in acting in time was due to the honest mistake by Plaintiff's advocates in calculating time within which the same was to be filed after leave was granted. The application is opposed on the ground that the application is incompetent and no proper ground is advanced to warrant granting orders sought.

I have perused the application and have considered the arguments of counsel. Parties should not be blocked in their pursuit of justice on technicalities. I do not see any prejudice that can be occasioned to defendant by granting the orders sought. The leave to amend was granted by court and it is by inadvertence, that the advocates failed to file and serve the papers in time. This is a common office mistake.

Upon consideration of the above, I allow the application and grant orders prayed with costs.

Delivered and dated at Mombasa this 11th day of October 2005.

J. KHAMINWA

J U D G E

11/10/05

Khaminwa, J

Jason – Court Clerk

Mr. Kibara

No Appearance for Ghalia

Ruling read in their presence.

KHAMINWA, J