

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1059 OF 1999

LEE EUN HEE.....PLAINTIFF/DECREE HOLDER

-versus-

CHARLES GITONGA GAKUU

AND THREE OTHERS.....DEFENDANTS/JUDGMENT/DEBTORS

-and-

DALLAGO TOURS AND SAFARIS LIMITED

AND TWO OTHERS.....OBJECTOR/APPLICANT

RULING

The Objectors/Applicants have moved the Court by way of a Notice of Motion dated and filed on the 17th February 2004 under Certificate of Urgency and brought under Order 49 Rule 5 and Order 21 Rule 56 of the Civil Procedure Rules seeking, **inter alia**, an order to extend the time limited for filing objection proceedings herein and that the objection proceedings attached to such application be deemed as duly filed and served within the time stipulated under Rule 56 of Order 21 aforesaid.

The Objectors, relying on several grounds supported by the affidavit of their learned counsel Mr. Njuguna Paul Chuchu made also on the 17th February 2004, conceded non compliance with the provisions of Order 21 Rule 57 of the Civil Procedure Rules through an oversight on the part of their said counsel as a result of which the application dated the 4th December 2003 filed earlier by the Objectors was struck out for such non compliance only and without being considered on its merits.

The Plaintiff/Decree Holder/Respondent opposed the application on the matters deponed to in the Replying Affidavit of his learned counsel Mr. Francis N. Kimani, made on the 18th February 2004 contending, **inter alia** , that the Applicants were not entitled to the discretionary orders sought because they have failed to adduce reasonable grounds and/or reasons for not complying with the law.

Having considered the respective submissions of both learned counsels in conjunction with all the other matters aforesaid, I am satisfied that it would not be just to deny the Objectors the opportunity to have their application heard and determined on its merits, particularly as the Objectors have taken prompt step to rectify their earlier failure to comply with prescribed procedural requirements by reason of their Advocate's mistake.

The application dated the 17th February 2004 is, therefore, allowed and the following orders made:-

- i) that the time limit for the filing of objection proceedings herein be and is hereby extended and that the objection proceedings attached to the said application be deemed as duly filed and served within the time stipulated under Rule 56 of Order 21 of the Civil Procedure Rules.
- ii) that such objection proceedings be set down for hearing on a priority basis within the next fourteen (14) days hereof to which intent this matter be mentioned before the Duty Judge on Monday the 1st March 2004 for the purpose of fixing a hearing date.

iii) the costs of this application shall be borne by the Objectors/Applicants.

Dated and delivered at Nairobi this 27th day February 2004.

P. Kihara Kariuki

Ag. Judge