



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION – MILIMANI**  
**CIVIL CASE NO. 612 OF 1998**

**BULLION BANK LIMITED..... PLAINTIFF**

**VERSUS**

**WORLDIN TOURS & TRAVEL LIMITED .....1ST DEFENDANT**

**PRARALI NAJI JUMA ..... 2ND DEFENDANT**

**AZMINA HERNANDEZ JUMA .....3RD DEFENDANT**

**RULING**

This Application dated 15th July, 2004 is seeking mainly one order. This is that time be enlarged for the Objector Applicant to commence or take proceedings to establish its claim to property attached in this suit. The main grounds for the Application are that the Objector misapprehended the rules but is the owner of the property. Yet it is not a party to these proceedings. And that the Judgment Debtor died in January, 2003. The Application is supported by two affidavits sworn by John Anuro Wananda Advocate and one Vaishali Madan Handa.

The Plaintiff/Respondent opposed the Application and filed a Replying Affidavit of one Azmina Mulji the Plaintiff's Debtor Recovery Manager.

The Application was argued before me on 19th July, 2004 by Oraro for the Objector/Applicant and Wamalwa for the plaintiff/Respondent. Counsel for the Objector submitted that Mr. Wananda Learned Counsel who was instructed by the Objector was under a misapprehension of the Law and failed to take up proceedings to establish the Objector's claim. He argued that Counsel's mistake should not be visited on the Objector. This was because the property the subject of the Objection proceedings is indeed the Objector's who is not a party to these proceedings. Counsel referred to the annexures exhibited by the said Vashali Madan Handa to support the Objectors claim to the said property.

It was further submitted for the Objector that the 2nd Defendant died on 1st January 2003. This being the case further proceedings could not have proceeded without substitution of the deceased Defendant by a legal representative.

Counsel for the Plaintiff Decree Holder in opposing this Application submitted that this Application has been brought rather late in the day and no sufficient cause has been shown for the delay. Counsel relied on the following cases for the proposition that ignorance of the Law is not a good reason to enlarge time:-

**1. Fredric Waweru & 2 Others –v- Kirtee B. Patel: Nairobi C.A.Civil Application No.221 of 1995 (UR) AND**

**2. Amratlal Stores Ltd –v- Shah Hirji Manek Ltd and 2 Others: Nairobi C.A. Civil Application No. NAI 186 of 2001.**

Counsel further submitted that in any event there was no proof of ownership by the Objector. Regarding the death of the 2nd Defendant Counsel argued that the same had not been communicated to the Court. In any event the 2nd Defendant participated in the Application for Summary Judgment. His subsequent death is of no consequence to these proceedings.

In a brief reply Counsel for the Objector submitted that the cases relied upon by Counsel for the Plaintiff/Decree holder are irrelevant as they involved Applications to enlarge time to file Notice of Appeal to the Court of Appeal and the delay in those cases was excessive.

I have considered this Application, the Supporting Affidavits and the Replying one and the annexures. I have perused the authorities cited. I have finally given due consideration to the able submissions by Learned Counsels appearing. Having done so, I take the following view of the matter.

Objection proceedings are by their very nature urgent applications. The Objector in this Application after filing its notice of Objection took no steps to establish its claim to the attached property for about 10 months. Under Order 21 Rule 58 (1) of the Civil Procedure Rules the Objection was deemed as waived when the Objector failed to file proceedings to establish its claim 10 days of service of the Notice of intention to proceed with attachment.

In the circumstances of this case I am not persuaded that the alleged misapprehension of the Civil Procedure Rules is a sufficient reason to enlarge time to file proceedings to establish the Objector's claim.

On perusing the affidavit of Vaishali Madan Handa and the annexures thereto, I note that the transfer to the Objector exhibited as 'VMH6' appears not to have been registered at the Lands Office as the same is not endorsed by the Registrar. The purported Lease between the Objector and Amin Naji Juma exhibited as 'VMH7' is not executed by or sealed by the Objector. The Lease is not even dated. I am therefore not sure of the *bona fide* s of the Objector.

In the result the Objectors Application dated 5th July, 2004 and filed on 6th July 2004 is dismissed in its entirety with costs to the Plaintiff/Decree holder.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2004.

F. AZANGALA

JUDGE

Read in the presence of: