

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

MISCELLANEOUS APPLICATION NO 34 OF 2002

NATIONAL BANK OF KENYA LTD APPLICANT

VERSUS

DAVID MUKII MEREKA T/A

MEREKA & COMPANY ADVOCATES RESPONDENT

RULING

This application was filed on 1st April, 2003 for an order that the court grants leave to the applicant to serve the notice of address on the Respondent out of the prescribed statutory time. The application is brought, under the provisions of Order 49 Rule 5 which provides that,

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.”

Under Rule 5 of Order 49, the High Court can only enlarge time which is fixed by the Civil Procedure Rules, a summary notice or order of the court.

It is conceded that the time within which to serve a notice of address on the Respondent is fixed by the court of appeal Rules and not by the Civil Procedure Rules. I agree with counsel for the Respondent, that this court would have no jurisdiction to extend the time within which a notice of address should be served upon the Respondent because, that would be a matter to be determined by the court of appeal whose rules have fixed such time. If Rule 5 of Order 49 had intended to give the High Court the power to enlarge time fixed by the Court of Appeal Rules, that could have been reflected in that Rule. I do not think that Section 3A of the Civil Procedure Act is applicable here in view of the fact that the Court of Appeal Rules have fixed the time within which such notice should be served upon the Respondent.

This application should have been filed in the Court of Appeal and not in the High Court. The same is struck out with costs to the Respondent as this court has got no jurisdiction to grant the orders sought.

Delivered at Nairobi this 7th day of May, 2003.

S. C. ONDEYO

JUDGE

7.5.2003