



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Civil Case 91 of 1998**

**FIDELITY COMMERCIAL BANK LIMITED.....PLAINTIFF**

**VERSUS**

**WORLDIN TOURS & TRAVEL LIMITED.....1<sup>ST</sup> DEFENDANT**

**AZMINA HERNANDEZ JUMA.....2<sup>ND</sup> DEFENDANT**

**Coram: J. W. Mwera J.**

**Ougo for Plaintiff/Respondent**

**Ahmed for Defendant/Applicant**

**RULING**

The application dated 21.5.2002 seeks orders under Order 9A rule 10, Order 49 rules 1, 2 and Section 3A Civil Procedure Rules to set aside this court's judgment which was delivered on 6.5.2002 after ex parte hearing. There was also a prayer for stay of execution of the resultant decree.

Mr. Ahmedr argued that the trial followed a hearing notice that was served by a person who was not licensed to serve such processes at the time. That the defences filed were strong. That indeed the trial went on when an application dated 25.2.2002 was pending in court and the plaintiff's advocate then did not accordingly inform the court and that there was no banker – customer relationship binding the litigants here, giving rise to the banking and accommodation facilities claimed in the plaint.

Mr. Hira posited that if the process server was not licensed, this court should view that in the light of the replying affidavit to this application and issue a ruling.

Having heard both counsel this court is minded to and it sets aside the judgment in question.

Parties should then take course in 30 days to prepare this suit for trial and set it down for hearing at the earliest possible opportunity.

Orders delivered on 8.11.2002.

**J. W. MWERA**

JUDGE