

REPUBLIC OF KENYA
In The Matter of: The Arbitration Act (1995)
Housing Finance Company Of Kenya Limited v Gitutho Associates

High Court Of Kenya At Nairobi
August 8, 2000
Milimani Commercial Courts
T Mbaluto, Judge

Misc Civil Application No 76 of 2000 (O S)
August 8, 2000 T Mbaluto, Judge delivered the following ruling.

When this matter initially came up for hearing before me on May 18, 2000, learned counsel for the respondent Mr Kembi raised a preliminary objection in which he argued that the Arbitration Rules 1997 had not been complied with. Although I upheld the preliminary point, I did not consider the matter of sufficient gravity to justify the striking out of the application. However I granted leave to the applicant to bring another application in accordance with the rules. It was indicated to both Mr. Havelock for the applicant and Mr Kembi for the respondent the reason for taking that course which was that, in my view, the Arbitration Rules 1997 which were allegedly not complied with were so badly drafted that they should not be liberally used to knock of applications.

Mr Havelock, Advocate for the applicant has now brought a fresh application as directed by court but Mr Kembi still complains in another preliminary objection that the application is out of time. That objection is clearly misconceived because in allowing a fresh application to be brought, the court must be deemed to have decided that the fresh application would be within the original application. That way the issue of time which did not feature in the original application would not have been an issue in the new application. So as to avoid further doubt in this matter, it is ordered that the time for bringing the new application in court in terms of the order made on June 8, 2000 be extended for such a period as is necessary to bring the application in time within the meaning of the Arbitration Act. The objection is overruled with costs.