

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO.10 OF 1998**

**FIDELITY COMMERCIAL BANK LTD.....PLAINTIFF
VERSUS
VINAY SHAH.....DEFENDANT**

R U L I N G

This application seeks to review an order of this court made on 24/7/1998 which dismissed the plaintiff's suit. The application is made under Order XLIV Rules, and 32, and Order L Rule 1 of the Civil Procedure Rules and is grounded on the following:-

- (a) That the said ruling is void for being contrary to the provisions of the Hire Purchase Act, Cap.517.
- (b) That the said ruling is void for being contrary to the law as obtaining is Kenya and as now more clearly set out and laid down in Diamond Trust Bank of Kenya Limited - and - Jaswinder Singh Enterprises, Civil Appeal Number 285 of 1998 (unreported).
- (c) That the Defence filed herein and the application dated 23rd June 1998 made herein is a nullity in law as they are a complete misunderstanding and misinterpretation of the law.

It would appear from a careful reading of the grounds of the application and also from submissions by learned counsel for the applicant that the applicants major complaint against the order made on 24/7/1998 is that the learned Judge who made it misapplied the law relating to the Hire Purchase Act. That I think is why reference is made to the case of Diamond Trust Bank of Kenya Limited and Jaswinder Singh Enterprises (court of Appeal Civil Appeal No.285 of 1998). That issue is however not the type of the matter that Order 44 rule 1 contemplates. In my opinion a review is permitted only in the circumstances described in rule 1 of O. XLIV and misapplication of the law is not one of them. Indeed that, I think is the reason why, while arguing the application, learned counsel for the applicant made no reference to the matters mentioned in Order XLI rule 1.

The other reason why this application should fail is that there has been unreasonable delay in bringing it. The order complained of was made on 24/7/1998. This application was not filed until 16/3/2000. In my view a delay of 20 months is unreasonable.

For the above reasons I find that the application lacks merit and I dismiss it with costs.

Dated at Nairobi this 8th day of December 2000.

T. MBALUTO

JUDGE