

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

PETITION NO.14 OF 2015

MILIMANI RESORT HOTEL LIMITED.....PETITIONER

VERSUS

KENYA REVENUE AUTHORITY..... RESPONDENT

RULING

1. By the motion dated 4.12.2015 brought under the provisions of Article 159 of the Constitution the appellant prays that:

“The honourable court be pleased to extend the time for the petitioner's compliance with the order issued on 2nd December 2015 for provision of a bank guarantee by 75 days or such number of days as will be sufficient for the petitioner to procure the same.”

The appellant's affidavit in support states the reasons as follows:

“That the equity bank requires:

- a. **30 days for the credit department at Nairobi to consider the application and the security advanced for approval.**
- b. **15 days for bank valuers to value the pieces of land to be given as security.**
- c. **30 days processing and registering the charges over the property including obtaining all the necessary consents and paying stamp duty.”**

2. The respondents have filed grounds of opposition in opposing the application. Its argument is that the application is a waste of time and is simply a delaying tactic and that its only meant to reopen the matter afresh.

3. Having carefully read the application together with the supporting affidavit I respectfully do not find any merit on the same. The reasons for such conclusion are two fold, namely that there is no supporting document showing such bank requirements. Even if there was it was upon the applicant to act fast and prudently and it cannot burden the respondent with his personal incapacity. In any event I do not think that this could be the only bank available with such stringent time bound datelines.

4. Secondly, and as clearly suggested by the respondent, if the court were to allow the application it would amount to a review of the orders earlier issued which the applicant has not sought, neither has he appealed against.

5. The application is therefore disallowed. The same was premature as it was brought even before the expiry of the period ordered by the court, namely 21 days. The court is also conscious of the fact that the applicant ought by now to have taken the advantage of this delayed ruling as the court was on official leave.

The respondent shall have the cost.

Orders accordingly.

Dated, signed and delivered this 10th March, 2016

H. K. CHEMITEI

J U D G E