

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

MISC. CIVIL APPLIC. NO.35 OF 2017

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF PROHIBITION

ELIAB MORRIS HANNO BENDO OMBOGO APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. By a notice of motion dated 3rd July 2017 made pursuant to Section 95 of the **Civil Procedure Act** and as read with Order 50 Rule 6 Civil Procedure Rules, the applicant (**ELIAB MORRIS HANNO BENDO OMBOGO**) prays that the time stipulated by the order dated 31st May 2017 for him to file Judicial Review application be extended.
2. He explains that the court had granted him leave to file an application for orders of Prohibition within 21 days on 31st May 2017. However, the principal file was mixed up at the High Court Civil Registry and was erroneously forwarded to Kisii Law Courts.
3. When he attended court registry on 12th June 2017 to file the motion for an order of prohibition, the file had not been returned to Homa Bay and the stipulated 21 days expired on 21st June 2017.
4. Although **MISS ONGETI** for the Director of Public Prosecution (DPP) Office Homa Bay was present in court during the hearing of the application, she was unable to comprehensively respond as she did not have any instructions.
5. In the affidavit sworn by **GEORGE SHANE OKOTH**, it is explained that after extracting the order granting leave, which also acted as a stay of the proceedings in Oyugis Criminal Case No.307 of 2017, the same was presented in court for signature, but they were informed that the file had been taken to Kisii Law Courts to be dealt with by the High Court Judge in Kisii under the presumption that the same had only been certified as urgent but not dealt with since the judge at Homa Bay had been bereaved and was not sitting.
6. Indeed I confirm that I was bereaved on the mentioned date and had directed that once the motion is filed it should be heard in Kisii. A perusal of the record confirms that indeed the file was taken to Kisii and placed before the judge and I believe the applicant's explanation. The applicant's prayer is merited and he is granted extension of time to file the motion within 7 days hereof.

Delivered and dated this 22nd day of January, 2018 at Homa Bay.

H.A. OMONDI

JUDGE