



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Judicial Review 404 of 2011**

**SOSPETER OKONGO OKOTH.....PLAINTIFF**

**VERSUS**

**1. SIAYA DISTRICT LAND DISPUTE TRIBUNAL**

**2. THE ATTORNEY GENERAL**

**3. WILSON OKONGO OYONJO.....DEFENDANTS**

**R U L I N G**

This is a ruling on a Notice of Motion filed here on 7/11/2012 and dated 6/11/2012. The application is brought under Sections 1A, 1B, 3, 3A, 63E of Civil Procedure Act and Article 159 of the Constitution. Essentially, the application seeks to enlarge time for the applicant – **SOSPETER OKONGO OKOTH** to file an application for **CERTIORARI** out of time.

It appears clear that the applicant had come to Court earlier vide Judicial Review No.404/2012 seeking leave to be allowed to file a Judicial Leave application. That leave was subsequently given and the applicant was ordered to file the relevant application within 21 days. He never did so. He came back to Court after almost one year with the application.

He explains in his supporting affidavit that he became sick. He became diabetic and suffered high blood pressure and impaired hearing. He could not also raise the money required at the time as he used the little he had on food and treatment.

The respondents and interested party filed their replies opposing the application.

In sum, the respondents stated the applicant I.e guilty of latches and has not preferred evidence of his alleged illness.

The interested party pleaded that the applicable law-order 53 of Civil Procedure Rules – does not provide for extension of time and the Court therefore lacks jurisdiction. The delay in filing the relevant application was also said to be unreasonable and unexplained. The alleged illness of the applicant was said to be a hoax meant to hoodwink the Court. The application is also said to be superfluous as the application for leave itself was filed after 6 months since the delivery of Tribunal's findings.

When the application came for hearing on 6/12/12 the counsel for applicant – Mr. Ogone – said that the applicant fell ill after granting of leave to file the relevant application. The applicant was said to be an old man of 90 years. He is diabetic, has cancer and suffered a stroke that impaired his hearing. He is also said not to have enough money.

M/s Langat for the respondent relied on grounds of opposition filed earlier, She said the applicant is guilty of laches and his application was termed as a delaying tactic. It was also pointed out that illness has not been proved.

Nyanga for interested party said the application I.e brought under Order 53 of Civil Procedure Rules which, he said, operates on its own without requiring other provisions of law. He also said that the provisions of law sought to be relied upon do not apply. The applicant is said to be abusing Court process.

The Court has this to say:

The overriding concern is to do justice. In order to do that, procedural handicaps may sometimes be downplayed. To say that however is not to mean that procedure does not matter. It is important to note that the Court **MUST** have **DUE REGARD** to procedure at all times. What is de - emphasized is **UNDUE REGARD** to procedure.

In this matter, the applicant was given leave to file application for Judicial Review even though he came to court after the six months allowed by law. That was proper. The ultimate aim is to do justice. Then it appears he went and slept. He is now coming to court again long after the expiry of the time granted to file the relevant application. Should the Court again indulge him?

The Court saw the applicant. He is a very old man. He impressed the Court as a rustic old man humble circumstances. It would not be proper to shut the doors of justice to him. The court has looked at the argument advanced by both sides. It seems to the Court that the opposing sides has more cogent arguments. Be that as it may, the bigger picture demands that the matter be given its light of day in Court so that it is decided on its own merits.

For that reason, and bearing in mind that this Court has the legal mandate to operate without procedural handicaps, the application herein is allowed **BUT** the applicant will pay the costs of the application. Further, the applicant is warned that continued non-compliance with/or departure from procedure will not be tolerated.

**A.K. KANIARU**

**JUDGE**  
**23/1/2013**