

IN THE HIGH COURT OF KENYA
AT NAKURU
MISC. APPLICATION NO. 244 OF 2003

SALIM ALI SAID.....APPLICANT

VERSUS

COMMISSIONER OF POLICE.....RESPONDENT

RULING

A preliminary objection on a point of law was raised regarding the applicants application for judicial review dated 8th June, 2004. In particular and relevant to the instant application was an objection to the title of the application; that it was not brought in the name of the Republic.

Relying on the famous authority of **Farmers Bus Service and Others** Vs. **The Transport Licensing Appeal Tribunal** (1959) EA 779 Musinga, J sustained the objection and directed that the heading of the application be amended appropriately within ten (10) days - from 5th April, 2006 when the ruling was delivered. Nearly four (4) years later, this application was brought for leave to extend time within which to comply with those orders.

The application is premised on the grounds that the applicant's former advocate, Mr. Omae, suffered a stroke in mid 2006 and has been indisposed since. Due to this, the orders of 5th April, 2006 were not complied with as he could not practice, neither could the applicant retrieve his file from him to instruct another advocate. The application was argued exparte as the respondent failed to reply or attend court despite service with both the application and the hearing notice.

The court's jurisdiction to enlarge time under **Section 95 of Civil Procedure Act** is unfettered, unless there is completely no explanation or justification for the delay. Mr. Omae represented the applicant when the order in question was made. The health condition of Mr. Omae is a matter of common knowledge within the legal/judicial profession. Although the period of delay is inordinate, a plausible and acceptable explanation has been offered. No prejudice or failure of justice will be occasioned by allowing this application. It is allowed and the applicant ordered to file and serve within 14 days of this order the amendment ordered on 5th April, 2006.

Costs to the respondent.

Dated, Delivered and Signed at Nakuru this 11th day of February, 2011.

W. OUKO
JUDGE