



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**MISC. CASE NO. 31 OF 2011**

POLLY WANJIRU KATHURA..... 1<sup>ST</sup> APPELLANT/APPLICANT  
ROSE MABUTI WACHIRA ..... 2<sup>ND</sup> APPELLANT/APPLICANT  
MARY WAMBUI WANJOHI ..... 3<sup>RD</sup> APPELLANT/APPLICANT  
NANCY WANJIKU KARIUKI ..... 4<sup>TH</sup> APPELLANT/APPLICANT  
MARTHA MICHERE MWATHI ..... 5<sup>TH</sup> APPELLANT/APPLICANT

VERSUS

BERNARD MURIITHI GATHURA .....RESPONDENT

**R U L I N G**

This is an application for extension of time to the Applicants to file a fraud case out of time. A fraud is a tort and under Section 4(2) of the Limitation of Actions Act (Cap. 22), any action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued.

The proposed plaint was not annexed to the supporting affidavit, and neither did the affidavit give the particulars of the alleged fraud to show when the cause of action accrued and therefore when time began to run for the purposes of limitation. The court does not therefore know how late the Applicants have been.

It is indicated in the supporting affidavit of the first Applicant that they were delayed by the Land Disputes Tribunal case No.103 of 2006 and the appeal that came therefrom when the Respondent was dissatisfied with the decision of the Tribunal. Under Section 27, the Applicants have to show, to the satisfaction of the court, that failure to file the suit within time was due to lack of knowledge of certain material facts of a decisive nature. (***GATHONI –V- KENYA CO-OPERATIVE CREAMERIES LTD [1982] KLR 105***). The Applicants are not saying that they were ignorant of any material facts of a decisive nature and that is the reason that prevented them from bringing the suit within time.

Consequently, the application is dismissed with costs.

Dated and delivered at Embu this 25<sup>th</sup> day of July 2011.

**A.O. MUCHELULE**  
**JUDGE**