



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**AT MERU Miscellaneous Case 67 of 2008**

KENNETH RAPHAEL KAINYANTHI.....PLAINTIFF  
VERSUS  
ANDREW KITHINJI KARUMA.....DEFENDANT

**JUDGMENT**

The applicant herein entered into an agreement to buy part of parcel number 1095 Maua Adjudication Section. His claims to have the defendant ordered to transfer that land to him is barred, by virtue of the fact that he was 8 months late, in filing this claim. The agreement is dated 10<sup>th</sup> January 2002. By virtue of Section 4 of the Limitation of Actions Act he should have filed his claim by the 11<sup>th</sup> January 2008. That is the 6 years which are provided under Section 4 for a claim founded in contract. He has brought the present *ex parte* originating summons dated 26<sup>th</sup> September 2008. He seeks by that originating summons for this court to grant him leave to file his suit out of time. In his affidavit in support of that application, he stated that the defendant had often made promises to transfer the suit property to him. Section 23 of Cap 22 recognizes that where time for filing a claim is passed there can be accrual of right to file action for recovery of land or an action founded in contract amongst others. Such accrual is where the defendant has acknowledged the plaintiff's claim. But Section 24 (1) of Cap 22 provides that such acknowledgement has to be in writing. That Section is in the following terms:-

*“Every acknowledgement of the kind mentioned in Section 23 must be in writing and signed by the person making it.”*

In this case, the applicant did not show such acknowledgement to be in writing. Although the applicant stated in his affidavit that the defendant made such acknowledgment such acknowledgement could not have caused him a disability to prevent him from filing the suit in time. Therefore, I find that Section 22 of Cap 22 does not assist the applicant. In the applicant seeking to rely on Section 22 in the present

matter, I find that it is a misapprehension of the word “*disability*.” The word “*disability*” is defined in the black’s Law Dictionary as:-

*“An objectively measurable condition of impairment, physical or mental.....”*

The defendant acknowledgment, if at all, could not have caused the applicant disability as envisaged in Section 22. I also find that the plaintiff’s application does fail for lack of consent as required by Section 30 (1) of the Land Adjudication Act Cap 284. That Section provides:-

*“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29(3) of this Act.”*

On the whole therefore, the applicant’s Originating Summons dated 26<sup>th</sup> September 2008 fails and is dismissed with no orders as to costs.

Dated and delivered at Meru this 30<sup>th</sup> day of April 2010.

**MARY KASANGO**  
**JUDGE**