

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Miscellaneous Application 672 of 2008

PAUL KARIMI GATITHI.....PLAINTIFF

VERSUS

LAKE KENYATTA WATER USERS ASSOCIATION.....DEFENDANT

R U L I N G

This is an application by way of Originating Summons dated 1st December 2008 and expressed to be brought under Section 28 of the Limitation of Actions Act (Cap 22) Laws of Kenya and Order XXXVI Rule 3 (c) of the Civil Procedure Rules in which the Applicant seeks leave to file his suit out of time.

The application is based on the grounds as stated in the body of the Originating Summons and supported by an affidavit sworn by the Applicant.

This application is brought under Section 28 of the Act Subsection (2) of the Limitation of Actions Act provides that where an application is made before the commencement of a relevant action,

the court shall grant leave in respect of a relevant cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the Plaintiff, it appears to the court that if such an action were brought forthwith and the like evidence were adduced in that action, that evidence would in the absence to the contrary be sufficient to establish that cause of action apart from any defence under Section 4 (2) and to fulfill the requirement.

The Applicant says he is the registered proprietor of the suit land being LR No LAMU/LAKE KENYATTA 1/1256. The Defendants erected two boreholes and fenced off about 1½ acres of his land and the Defendants verbally agreed to compensate him but afterwards the negotiations did not bear fruit and he now wants to file a suit for compensation.

I am satisfied that the Applicant has placed before me sufficient materials to enable me exercise my discretion in his favour and grant the leave sought.

Accordingly I allow the application in terms of prayer 1 of the Originating Summons dated 1st Defendant 2008.

Dated and delivered at Nairobi this 15th day of June 2009.

J. L. A. OSIEMO

JUDGE