

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 238 of 1996

NIXON GITHINJI KARIUKI.....PLAINTIFF

VERSUS

THUKU NYAGA.....DEFENDANT

RULING

This is an application for extension of time brought pursuant to the provisions of Section 3A and 95 of the Civil Procedure Act and Order 49 Rule 5 Order 50 Rule 1 of the Civil Procedure Rules. On 25th September, 1997 the parties herein agreed by consent to refer their dispute to the District Officer, Rumuruti for arbitration. The award was to be filed within sixty (60) days from 25th September, 1997. The same was, however, not filed, until 15th December, 1997 and read to the parties on 2nd April, 2001. Any aggrieved party had thirty (30) days to challenge the same. The applicant was aggrieved by the award and filed an application to set it aside on 2nd August, 2002. The application was dismissed on 16th December, 2002 for having been filed out of time and without leave.

The applicant has now brought the instant application. The same was filed on 12th May, 2008 and is based on the grounds that the applicant lost his job in 2000 and had no finances to bring this application earlier; that he had to pay fees to his children in school and college. The ***H.C.C.C.NO.238/96***

respondent has filed, through his counsel, grounds of opposition in which it is deposed that the application has been brought after a delay of five (5) years without any sound explanation. That the application is an abuse of the court process. I have considered the application and the grounds of opposition. The court has unfettered discretion to extend time fixed by it for the doing of any act.

The court may extend time even when the original period fixed may have expired. The award, as I have stated earlier, was read on 2nd April, 2001. Any aggrieved party had thirty (30) days to challenge it. The applicant sought to set it aside by an application filed on 2nd August, 2002, well after one year. The court found that the same had been filed without leave and dismissed it on 16th December, 2002.

In dismissing the application, Ondeyo, J. advised the applicant to file another application for leave to challenge the award outside the thirty days fixed for doing so. The applicant has taken nearly six years to bring the present application.

It is trite that a delay in doing an act ordered by the court within a fixed time frame is excusable if the applicant offers satisfactory explanation for the delay. Dealing with an application for extension of time under Rule 4 of the Court of Appeal Rules, Omolo, JA stated as follows in **Reliance Bank Ltd. (In Liquidation) and 2 others V. Southern Credit Bank Corporation**, Civil Application No.118 of 2007:

H.C.C.C.NO.238/96

“Then there is the delay of 64 days to which I have been referred and in my view that delay remains unexplained and as I have stated, any amount of delay, even if it be one day ought to be explained in

some way.”

The explanation that the applicant was unable to bring the present application earlier due to financial problems are not, in my view, persuasive. The five years delay was inordinate and for that reason, this application is dismissed with costs.

DATED and DELIVERED at Nakuru this 21st day of July, 2009.

W. OUKO

JUDGE