



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Case 176 of 1999**

**GEORGE MBUGUA NDIRANGU.....PLAINTIFF**

**VERSUS**

**COUNTY COUNCIL OF NAKURU.....1<sup>ST</sup> DEFENDANT**

**ESTON KAMAU NJAU.....2<sup>ND</sup> DEFENDANT**

**NGECHA NEW FARMERS CO-OP. SOCIETY.....3<sup>RD</sup> DEFENDANT**

**RULING**

This suit was instituted in 1999. In it, the appellant is claiming from the respondent damages for the loss occasioned by the demolition of the applicant's building by the respondent, perpetual injunction and costs. It took nearly six (6) years for the suit to be set down for hearing. The applicant was the first witness but was stood down to enable his counsel to amend the amended plaintiff to include a prayer for special damages. That application was allowed and the applicant given thirty (30) days from 22<sup>nd</sup> August, 2005 to file and serve the amended plaintiff.

The present application was brought on 8<sup>th</sup> August, 2006 for extension of time within which to file the amended plaintiff. It has been explained that the delay of nearly one year was occasioned by the applicant's impecuniosity as he was required to raise Kshs.70,000/= for court fees. His efforts to fundraise by approaching individuals and other institutions as

well as his attempts to sell his share of his father's land all come to naught. He now proposes to approach the court to allow him to sue as a pauper. The application was opposed by the 1<sup>st</sup> respondent who has deposed that the amended plaintiff was filed without leave and without payment of the requisite court fees, that there has been inordinate delay in complying with the leave granted by the court; that the grounds advanced in this application are insufficient.

I have considered these arguments. The court (Musinga J.) granted to the applicant leave to file and serve the amended plaintiff within 30 days from the date of the said leave, i.e. 22<sup>nd</sup> August, 2005. The present application for extension of time was not filed until 8<sup>th</sup> August, 2006, a period of nearly one year. The only ground advanced in support of the application is that the applicant was unable to raise Kshs.70,000/= for court fees. The power donated to the court by Section 95 of the Civil Procedure Act and Order 49 rule 5 of the Civil Procedure Rules to extend time is unfettered. That discretion will only be exercised in favour of an applicant who has demonstrated that he had a good and sufficient reason for not complying with the time imposed. The period of delay is immaterial so long as there is a plausible explanation.

The delay in this matter is nearly one year and the only reason advanced is lack of finances. The applicant has come one year later to seek extension of time without any prospects of raising Kshs.70,000/=. The extension will be futile. Secondly, he has not explained why he did not return to court before the thirty (30) days allowed by the court expired.

The application lacks merit and is dismissed with costs to the respondent.

Dated, Signed and Delivered at Nakuru this 16<sup>th</sup> day of October, 2009.

**W. OUKO**

**JUDGE**