

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISCELLANEOUS CIVIL APPLICATION 174 OF 2009

KAGUMO COLLEGE WORKERS SACCO.....APPLICANT

Versus

JOSEPH MUREITHI MWANIKI.....RESPONDENT

R U L I N G

Pursuant to the provisions of section 95 of the Civil Procedure Act and section 28 of the Limitation of Actions Act, Kagumo college workers Sacco, the applicant herein took out a notice of motion in which it prayed for the enlargement of time to file suit out of time. The motion is supported by the affidavit of **S.W. Kahoi** sworn on 1st January, 2009.

The application is exparte by dint of section 28 (1) of the Limitation of Actions Act. It is the submission of the applicant that it instructed the firm of **M/s Mathenge & Muchemi Advocates** to file suit to recover a sum of Ksh.55,782/6 from **Joseph Mureithi Mwaniki**, the respondent herein, sometimes in the year 2001. It is said that on drawing the court documents and requesting for filing fees, the applicant's previous management did not respond to the request until the time to file suit lapsed. It is said that when the applicant's new management took up office, it discovered that the respondent still owed the applicant the aforesaid sum. The applicant avers that it is desirous to recover the debt hence the need to be given leave to file an action out of time. It is obvious from the material placed before this court that the applicant advanced to the respondent a sum of Ksh.30,411/90 in the year 1995. The applicant demanded payment of the aforesaid sum on 14.3.2001. The respondent acknowledged receipt of the demand letter by his letter dated 17.05.2001. He admitted owing the aforesaid sum to the applicant. He even proposed to liquidate the debt by monthly installment. He did not fulfill his promise. It is now about 8 years since the respondent acknowledged the debt. The applicant has blamed the previous management committee for failing to file suit within time. Under sections 22 and 28 (1) of the Limitation of Actions Act, the court can only extend time to file an action out of time if the evidence adduced shows that the applicant suffered from serious disability or dies or for any sufficient reason. The reason advanced by the applicant herein indicates that the applicant's previous management committee was indolent. It did not give the advocate sufficient instructions to institute recovery proceedings against the respondent. In the circumstances this court will not exercise its discretion in favour of an indolent party who condoned delay. The applicant should suffer for the indolent conduct of its management committee. Let the respondent enjoy the rights he has acquired under the law. In brief, the reasons given by the applicant do not meet the threshold prescribed by the law. For the above reasons the motion dated 15th January, 2009 is ordered dismissed with no order as to costs.

Dated and delivered at Nyeri this 13th day of October 2009.

J.K. SERGON

JUDGE