

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Civil Appeal 63 of 2005

**IN THE MATTER OF AN APPLICATION FOR EXTENTION OF THE LIMITATION PERIOD
SECTION 27 OF CAP 22 LAWS OF KENYA**

BETWEEN

FRANCISCA OSYANJU.....APPLICANT

VERSUS

JOHN SIKUKU.....RESPONDENT

RULING

The applicant through Roselyne Aburili & Co. Advocates filed this motion way back in March 2005 (almost 3 years ago).

The motion is by way of Originating Summons pursuant to OXXXVI Rule 3 (c) of the Civil Procedure Rules and section 27 of the Limitation of Actions Act Cap 22 of the Laws of Kenya. The applicant is seeking to file a suit for damages out of time.

A cursory look of the application however will clearly show that the same is incurably defective. I say so because an application for leave is supposed to be premised on section 28 (1) of the Limitation of Actions Act. That section has been omitted totally in the application as one of the provisions the applicant is seeking to rely upon. That makes the application incurably defective and it calls for striking out.

For the sake of argument, even assuming that the application was properly before the court, the same does not comply with the requirements of section 28(2) of the Limitation of Actions Act. This application inevitably calls for dismissal. The same is consequently dismissed with no order as to costs.

W. KARANJA

JUDGE

DELIVERED, Signed and Dated this 13th day of February, 2008 in presence of Mr. Kakoi for Aburili for the applicant.