



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**STEPHEN MURIITHI NJERU.....PLAINTIFF**

**VERSUS**

**PATRICK KARIITHI NJERU.....DEFENDANT**

**RULING**

This suit was filed against the first Defendant on 6/12/2005. The cause of action is wrongful and unlawful imprisonment and malicious prosecution.

By application dated 7/1/2008 the plaintiff/Applicant seeks to extend time for suing the Kenya Government as 2<sup>nd</sup> Defendant. The cause of action against the Attorney General is indicated in the draft amended Defence. The cause of action arose on 4/3/2005 when the plaintiff was acquitted of criminal charges. Leave was sought and allowed by court on 6/6/2006. However by that date the prescribed time had already expired. Another Application was filed on 1/3/2007 which was found to be defective and was withdrawn on 16/5/2007, and that delay was caused by mistake and inadvertence of the applicants counsel. Although the application is by procedure is made ex parte the relevant Act which limits the time regarding the Public Authorities Act is Public Authorities Act Cap 39. The state counsel appeared and submitted that the Act does not allow for any extension except in cases of disability under Section 5 thereof the Act was enacted to provide for limitation of proceedings against the Government and local Authorities. With reference to the opinion of Kuloba Digest the provisions of Act 22 is modified in relation to provision of Cap 39. See Section 6 thereof.

Upon considering the arguments of counsel it is my finding that it is not proved that the applicant was suffering any disability the cause of action arose. Again there has been inordinate delay in this matter. Application is dismissed with no order as to costs.

It is so ordered.

Dated this 5<sup>th</sup> May, 2008.

**J. N. KHAMINWA**

**JUDGE**

**5/5/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Onyiso for state counsel for AG**

**J. N. KHAMINWA**

**JUDGE**