

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
Misc Civ Appli 705 of 2006

YUYA FARMERS CO-OPERATIVE LIMITED APPLICANT

VERSUS

MERCIA MULIRO (Sued as a Personal

Representative of Masinde Muliro – deceased) RESPONDENT

R U L I N G

This is an application under the provisions of Order 36, Rule 3 (c) (4) of the Civil Procedure Rules, Section 3A of the Civil Procedure Rules and 26-30 of the Limitation of Actions Act, Chapter 22 of the Laws of Kenya.

I have carefully considered the application herein and the submissions by Counsel. The affidavit sworn by Mr. Joseph Muchoe Wanyama contains a narration of what appears to be quite a sad and unfortunate history of the claim by the Applicant relating to the proposed suit property. If true, this case would perhaps demonstrate the trials and tribulations that befall many litigants in Kenya. The main problems in this regard would be the poverty, high cost of litigation, lack of effective legal representation, the complexities of laws and procedures to the ordinary Kenyan, lack of equality and bargaining power before the law.

It is my view that the Applicants ought to be given an opportunity to try and present their claim in this matter. Due to the long delay in this matter and in fairness to the proposed Defendant any leave granted must be upon terms.

In exercise of the Court's powers and discretion I do hereby grant leave in terms of Prayer 1. The action shall be filed within the next 21 days. The leave is granted on condition that the Defendants shall have the right to revisit the questions of leave in the new suit either by way of a formal application to strike out, by way of a preliminary objection, or as one of the issues for determination at the trial.

Orders accordingly.

DATED AND DELIVERED AT ELDORET ON THIS 19TH FEBRUARY, 2007.

M. K. IBRAHIM

JUDGE