



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**

**Misc Civil Appli 252 of 2000**

**DANIEL WEPUKHULU & ANOTHER:.....: APPLICANTS**

**VRS**

**ATTORNEY GENERAL:.....: RESPONDENT**

**RULING**

After going through this file, I noticed that there were 2 similar applications, filed by the same counsel seeking similar reliefs. One is dated 28<sup>th</sup> September, 2000 and the other is dated 15.5.2001. When the second one was filed the other application was still on record. Counsel should have withdrawn it first. Her conduct amounts to an abuse of the court process and it renders the 2<sup>nd</sup> application to be improperly on record. The same should and is hereby struck out. That leaves the 1<sup>st</sup> application dated 28/9/00/ I note that the same is supported by an affidavit which is not dated. An affidavit must indicate the date and place it is commissioned.

The failure to date an affidavit is fatal and it renders the same incurably defective for contravening the provisions of Cap 15 of the Laws of Kenya. Accordingly the said affidavit is struck out. OXXXVI (36) 3 C (1) of the Civil procedure Code explicitly provides for the mode and procedure of bringing to court an application based on section 27 of the Limitation of Actions Act. The same provides that:

***“An application under section 27 of the Limitation of Actions Act made before filing a suit shall be made ex-parte by Originating Summons supported by affidavit.”***

The application in question was brought to court by way of Notice of Motion under O.Lr.1 and 7 of the Civil Procedure Rules. The same is also not supported by an affidavit (it having been struck out) it therefore also calls for striking out and it is hereby struck out with no order as to costs.

**W. KARANJA**

**JUDGE**

**DELIVERED and Dated at Bungoma this 13<sup>th</sup> day of February, 2007.**