



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Misc Civ Appli 59 of 2006

SOSPETER NJIRU MBITI.....APPLICANT

VERSUS

MINISTER FOR LANDS & SETTLEMENT.....RESPONDENT

RULING

Application herein is brought under certificate of urgency on the ground that time limited for making application has expired and therefore the urgency. The application by Originating Summons is brought under Civil Procedure Rules section 3 and 3 A of C.P.C Act Cap. 21 and Order XXXV1 rule 1 (a) which provides for the determination of any question affecting the rights or interest of a person claiming to be a creditor, devise legatee heir or cestique trustee for purposes of section 31 Limitations of Actions Act Cap. 22 in respect of intended Action for Judicial Review for orders of certiorari out of time to quash the orders of District Commissioner Mbeere relating to **Mbeere/Mbita/Adjudication** Section No. 256 made on 21st March 2003. The application is supported by affidavit of Applicant.

Upon filing Originating Summons the Applicant has filed Chamber Summons dated the same date seeking leave to enlarge time within which the Applicant may bring an application for an Order of Certiorari to quash the orders of D.C. **Mbeere/Mbita/Adjudication** section Number 256 made on 21/3/2003. The grounds are listed on the application. That D.C proceeded to hear appeal No. 430 of 1996 in which the said Mbiti Munyugo was appellatant when he was dead and delivered ruling on 17/6/2003. At the time of hearing of the said complaint there was no legal personal representation of deceased. The grant was issued on 24th November, 2005. That the applicant had taken out application for Judicial Review and the same was dismissed because he had not received a grant of representation to the deceased estate. The application is supported by affidavit of applicant. The first time the Judicial Review was instituted was on 23/12/2003. The decision was made in March 2003 which was dismissed as stated above. Order 49 rule 5 the court is empowered to enlarge time where limited time “**under these Rules or by Summary Notice or by order of courts whether the application for enlarging of time was filed after the expiration appointed or allowed**”.

The court has noted that the jurisdiction of Judicial Review is granted by Law Reform Act section 8 and 9 which direct that the limitation for applications of Certiorari be limited to 6 months section 95 Civil Procedure Act also provides for extension of time. The learned Lady Advocate has authorities in which the issue of extension of time has been considered in **Misc. HCC Application No. 180 of 2004** in that case after argument the learned Judge found that the period of 6 months had not expired. In the **HCC Misc. Application No. 223 of 1994 Hon. Sheikh Al. Amin** (now retired) there was delay in filing Notice of Motion within time limited (3 weeks) the Judge extended time to comply within 2 weeks. In those two authorities it will be seen that leave was granted within 6 months. In the present case Chamber Summons seeking extension was filed 8/5/2006.

I have read the reasons of delay and the subject matter in dispute and have noted that the statutory body proceeded to hear the matter notwithstanding he was notified that the Appellant had expired.

I am satisfied that unless leave is granted there will be injustice occasioned. I therefore allow the application and grant enlargement of time as prayed. The application shall be filed and served within the next seven (7) days from the date hereof.

Orders accordingly.

Dated this 25th April, 2007.

J. N. KHAMINWA

JUDGE

25/4/2007

Khaminwa – Judge

Njue – Clerk

Kimathi HB for Ms. Kamau.

Ruling read in open court.

J. N. KHAMINWA

JUDGE