

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL CASE 271 OF 2002

CHARLES CORRIS MOMANYI PLAINTIFF

VERSUS

1. BOARD OF GOVERNORS NYABURURU GIRLS HIGH SCHOOL

2. PERMANENT SECRETARY MIN. OF EDUCATION SCIENCE

AND TECHNOLOGY

3. THE ATTORNEY GENERAL..... DEFENDANTS.

RULING

Counsel from the defendant raised a Preliminary Objection and stated that suit against the 2nd & 3rd defendant suit is time barred. He referred court to Public Authorities Act which provides that suits against the Act of Public Authorities should be filed within one year. The cause of action in this case accrued on 25/11/99 and suit filed on 24/10/02. This was after one year. No application to extend time was made or if it was they were not served with the courts order.

Mr. Minda informed court that plaintiff moved the court in Misc. App. No.264 of 2002 and obtained an order extending time to file the suit. This was before the suit was filed. I have considered the Preliminary Objection. It has no merit. Indeed the plaintiff moved the court and on 22nd October 2002 P. K. A. Birech Commissioner of Assize (as he then was) did grant the applicants application. The court ruling was filed together with the plaint on 24th October 2002, two days after the ruling. Even if it was not served on the defendant that does not mean that he filed the suit without leave. In fact there are no specific legal requirements that the order be served.

I therefore find the objection has no merit and the same is dismissed.
Dated 14th day of April 2005.

KABURU

BAUNI

JUDGE

c/c.
Mr. Ogutu H/B for Kimanga for Defendant.

Mobisa