

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

MISCELLANEOUS APPLICATION 102 OF 2004

JOHN FRANCIS MUYODI..... APPLICANT

VERSUS

1 KENNEDY ODHIAMBO OWITI & CO ADVOCATES)

2 PETER LUNANI ONGOMA)

3 MARIKO AYIEKO ONGOMA) DEFENDANTS

RULING

The applicant, John Francis Muyodi prayed for leave to file an action out of time against Peter Lunani Ongoma, Kennedy Odhaimbo Owiti & Co. advocates and Mariko Ayieko Ongoma in a chamber summons brought under sections 27 and 28 of the Limitation of Actions Act. He has filed an affidavit he swore in support of the summons.

The main reason advanced by the applicant for failing to file his action in time is that he was busy pursuing the matter through an application within a suit which had been struck out and when the same was dismissed, time to institute an action had lapsed. The applicant states that his intended action is based on the provisions of section 4 (2) of the Limitation of Actions Act. I have examined the provisions of section 4(2) of the Limitation of Actions Act.

It limits the time allowed to a party to bring an action to 3 years. The applicant says his cause of action arose on the 5th day of June, 2002. It is imperative to note that time to sue lapsed on the 5th day of June, 2004. This Court has a wide discretion to extend time to file an action out of time depending on the circumstances of each case as prescribed under section 27 of the Limitation of Actions Act. I am convinced that the reason advanced by the applicant is genuine to enable me exercise my discretion in his favour.

Consequently, the applicant is granted leave to institute his intended action within 10 days from the date of this order.

DATED AND DELIVERED THIS 8th DAY OF April 2005.

J. K. SERGON

JUDGE