

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
MISC. CIVIL APPL. NO.221 OF 2004

DANIEL KIPRONO NAIMOJA APPLICANT

VERSUS

DISTRICT LAND ADJUDICATION OFFICER TRANSMARA ... RESPONDENT

RULING

The applicant DANIEL KIPRONO NAIMOJA's application is under Order 49 rule 5 and Order 50 rule 1 CPR. He seeks court to enlarge time for bringing application for judicial Review.

Mrs. Asati for the Applicant told court that a decision was made against the applicant by The District Adjudication Officer Transmara District on 24th October 2000. Objection proceedings were filed against the decision. The applicant was waiting to be informed of the position. On 24th October 2000 the officer withdrew the objections on evidence allegedly given by the applicants' son who is said to have appeared before the Officer and told him he had instructions to withdraw the objections. The decision to withdraw was not communicated to the applicant until September 2004 when he learnt about it. He filed this application in Dec. 2004. She submitted that court has powers under Order 49 rule 5 CPR to enlarge time.

Mr. Kemo for the state did not oppose the application and he too held that court has powers to extend time.

This court was referred to case of REGINA VS. CRIMINAL INJURIES COMPENSATION BOARD 1999 WLR 975 where the court said time may be extended. However our own Court of Appeal have had occasion to consider this issue in the case of WILSON OSORO VS JOHN OJIAMBO OCHOLA and AG C.A. NO.6 OF 1995. The court stated clearly that the court has no discretion to extend time if an application for leave is not brought within six months. They held that the words in Order 50 rule 2 CPR are mandatory that an application can only be brought within 6 months. They referred to S.9 (3) of the Law Reform Act whose provisions are the ones adopted Verbatim in Order 50 rule 2 CPR cannot be used to extend time limited by statute. There is no provision to extend time to apply for leave under The Limitation of Actions Act.

In the circumstances this court has no jurisdiction to extend time for the applicant to apply for leave for certiorari. The decision he want quashed was made on 24th October 2000 – over four years before this application was filed.

The application is therefore dismissed.

Dated 24th May 2005

KABURU BAUNI

JUDGE

c.c. Mobisa

Mr. Nyamorungi H/B for Mrs. Asati for Applicant.