

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Misc Civ Appli 39 of 2004

ANNAH WATETU THEURI)

ELIJAH HOPE KIBICHO THEURI)
..... **APPLICANTS**

VERSUS

COMMISSIONER FOR LANDS
RESPONDENT

R U L I N G

Annah Watetu Theuri and Elijah Hope Kibicho Theuri hereinafter referred to as the Applicants have come to this court by way of notice of motion moving this court under section 5 of the Public Authorities Act Cap. 39, section 26 of the Government Proceedings Act (Cap 40) Order XLIX rule 5 of the Civil Procedure Rules and sections 3A and 95 of the Civil Procedure Act seeking leave of the court to institute proceedings against the commissioner of lands out of time.

The grounds stated on the body of the application and the supporting affidavit sworn by Anna Watetu Theuri are to the effect that the right of action arose in the year 2000, but the applicants were not able to file the suit because they were let down by their former counsel who they had instructed to file suit but who apparently stopped practicing without filing the suit.

I have carefully considered the provisions under which this application is brought. Order XLIX rule 5 of the Civil Procedure Rules cannot apply to this application as it deals with enlargement of time where time is either limited by Civil Procedure Rules or by Summary notice or by the court. In this case the time for filing the suit is specifically limited under section 3 of the Public Authorities Limitation Act. Similarly section 95 of the Civil Procedure Act cannot apply as that also deals specifically with time limited under the Act.

Section 5 of the Public Authorities limitations Act provides for extension of time where the applicant has been under a disability.

In this case the applicant was clearly not under any disability. Although the Applicant blames his former advocate, it is evident that the applicant has not been vigilant in pursuing this matter. For instance despite a notice of intended prosecution having been served on the A.G. in the year 2002 this application for leave was not filed until the year 2004. It is evident that the applicants have been indolent in pursuing this matter. They are not deserving of the exercise of this courts inherent jurisdiction under section 3A of the Civil Procedure Act.

For all the aforesaid reasons, I find no merit in this application and do therefore reject it. Those shall be the orders of the court.

Dated signed and delivered this 21st July 2005

H. M. OKWENGU

JUDGE

