



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**MISC CIV APPLI 100 OF 2005**

**JAMES GITHINJI KIARA ..... APPLICANT**

**VERSUS**

**WILLIAM WACHIRA MWANIKI ..... RESPONDENT**

**R U L I N G**

James Githinji Kiara hereinafter referred to as the Applicant has come to this court by way of notice of Motion under Order XLIX rule 5, Order LIII rule 2 of the Civil Procedure Rules and section 3A of the Civil Procedure Act seeking leave of this court to apply for orders of certiorari against orders made by Karatina Land Disputes Tribunal in Land Disputes Tribunal Case No. 2 of 2003 out of time.

In his supporting affidavit, the applicant explains that the tribunal award was read on 12<sup>th</sup> March 2003, but that being a layman, he only came to learn of the remedy of judicial review recently hence his lateness in coming to court. In other words the applicant is pleading ignorance of the law which is never really an excuse in law.

Order XLIX rule 5 of the Civil Procedure Rules states as follows:

***“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.....”***

That rule provides a general power to the court to extend time where necessary for the doing of any act under the rules. However Order LIII rule 2 of the Civil Procedure Rules states as follows:

***“2: Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any Act, and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”***

This rule is almost identical with section 9(3) of the Law Reform Act (Cap. 26) which provides a similar provision. It is apparent that the power of the court to extend time to apply for orders of certiorari after 6 months from the time of the action complained of, has been taken away by these provisions which are mandatory provisions, the court has therefore no powers to extend time if the application for leave is not made within the 6 months provided.

The applicant also relied on section 3A of the Civil Procedure Act which gives the court inherent powers to make any orders to meet the ends of justice or prevent the abuse of the process of the court. In this case the applicant’s ignorance would not justify the exercise of the court’s inherent powers. The applicant had ample time to seek appropriate advise and has only himself to blame for failing to do so in good time.

The application for extension of time within which to seek leave to apply for orders of certiorari is

accordingly rejected.

*Dated this 3<sup>rd</sup> day of October 2005*

**H. M. OKWENGU**

**JUDGE**