

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI**

MISC. APPLICATION NO. 1034 OF 2003

CRYSANTHUS MUCHIRI GICHERU APPLICANT

VERSUS

GROUND WATER SURVEY (K) LIMITED RESPONDENT

RULING

The applicant in this Chamber Summons dated 6th April 2004 seeks to set aside the Court's order of 17th October 2003 in which the Respondent was granted leave to file suit out of time. The grounds in support of the application are that

- 1) The Court has no jurisdiction to grant leave to file suit out of time where the claim is founded on contract
- 2) That the Court was misled into granting the said leave.

The Respondent objects to the application and argues that leave having been granted the same cannot be challenged especially since it has been acted upon and complied with.

I have seen the order dated 17th October 2003 issued on 22nd October 2003. I note that the same was conditional upon the Respondent filing his suit within 30 days, in default of which the said leave would automatically lapse.

I cannot sit on appeal against the learned judge who found it fit and proper to grant the subject leave upon facts and/or arguments presented before him. No evidence has been presented before me to prove that the Learned Judge was "misled into granting the orders sought" and I see no good reason why I should reverse his Lordship's order. Much as this court has inherent power to set aside its own orders, such power can only be properly exercised by the judge who made the order.

In the premises I refuse to allow this application and dismiss the same with costs to the Respondent.

Dated and Delivered at Nairobi this 24th day of September 2004.

M.G. Mugo

Ag. Judge

In the presence of:

J.M. Mugo & Company Advocates for the Applicant/Plaintiff - Gichimu

J.H. Ojiambo & Company Advocates for the Defendant/Respondent - N/A