

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC CIVIL APPLICATION NO. 1282 OF 2000**

**THE CO-OPERATIVE BANK OF KENYA
& OTHERS.....PLAINTIFF
VERSUS
REPUBLIC.....DEFENDANT**

RULING

This is a preliminary objection to the Notice of Motion dated 19.2.2001 for order of prohibition on the ground that the Notice of Motion was filed over 21 days after court granted leave to file the application to apply for Order of Prohibition.

Leave to apply for order of prohibition was granted on 1.12.2000. The application for order of prohibition was filed on 19.2.2001. By Order LIII Rule 3(1) CP Rules, the application for order of prohibition should be made within 21 days from date of grant of leave. Section 9(1) of the Law Reform Act gives power to make Rules of the court. Specifies the matters which can be covered by the Rules of the court. But as section 9(1) clearly states the Rules of the court which can be made are not limited to the specified matter. The specified matters which can be prescribed by the Rules of the court are only part of the matters which the Rules can provide for. I am satisfied that Rule 3(1) of Order LIII is not ultra vires S. 9(1) of the law Reform Act and that the limitation period of 21 days which is mandatory applies.

There was no application made to extend time before the application was filed.

Consequently, I am satisfied that the application dated 19.2.2001 was filed outside the period prescribed by Rule 3(1) of Order LIII. It is struck out with costs to the Respondent.

E. M. Githinji

Judge

14.3.2001

**Mr. Wamalwa present
Mr. Omwega present
Mr. Manjaja present**