



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC. NO. 865 OF 1999**

**GEORGE AMARA.....PLAINTIFF**

**V E R S U S**

**THE REGISTRAR OF SOCIETIES.....DEFENDANT**

**R U L I N G**

Section 9(3) of the Law Reform Act (Cap. 26) provides as follows:-

***“9..... (3) In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired”.***

The decisions of the Registrar of Societies sought to be questioned in this application were made on 22nd July, 1997 and 11th February, 1998. This application was filed on 28th July, 1999. It was obviously out of time. The case of **Wilson Osolo v. John Odhiambo Ochola** NAIROBI C.A. Civil Appeal No. 6 of 1995 is quite clear that there is no provision for extending time under Section 9(3) of Cap. 26. The Applicant, having failed to comply with a preliminary requirement in this respect, was not entitled to bring this application. The fact that leave was granted by this Court to bring the application does not of itself alter the situation. It is noted that applications for leave in these matters are made ex parte. If the Respondent should consider it necessary to challenge the leave he may subsequently apply for it to be set aside as was stated in **R. v. Communications Commission of Kenya & 2 Others ex parte East African Televisions Network Ltd** NAIROBI C.A. Civil Appeal No. 175 of 2000 (Unreported) (OMOLO, TUNOI & KEIWUA, JJ.A). Also I am of the view that the matter may be determined at trial as a preliminary objection. This was done by PALL, J. (as he then was) in **Raila Odinga & 6 Others v. Nairobi City Council** NAIROBI H.C. MISC. CIV. APP. NO. 899 of 1993 (unreported). I also had the opportunity to consider the matter in **Samuel Amoke Nyakeriga & 6 Others v. The United Nations High Commissioner for Refugees & 6 Others** NAIROBI H.C. MISC. APP. NO. 638 of 2001 in which the Applicants came before me seeking leave to bring judicial review proceedings. In that case, I observed that since leave is granted ex parte, the Respondent should be given an opportunity to challenge the order for leave and if it is found that leave should not have been granted in the first place, the judicial review proceedings should not be allowed to continue. This application is outside the statutory period and cannot be saved in any way. It is hereby struck out with costs.

DATED and DELIVERED at NAIROBI this 24th day of September, 2001.

**ALNASHIR VISRAM**

**JUDGE**