



IN THE COURT OF APPEAL

AT KISUMU

(Coram: Nyarangi, Gachuhi JJ A & Kwach AG JA)

CIVIL APPEAL NO 27 OF 1989

AKO.....APPLICANT

VERSUS

SPECIAL DISTRICT COMMISSIONER KISUMU

& ANOTHER.....RESPONDENT

JUDGMENT

(Appeal from the Ruling of the High Court at Kisumu, Omolo J, in High Court Miscellaneous Application No 56 of 1986 dated 30th March 1986)

June 19, 1989 the following Judgment of Court was delivered.

It is plain that under sub-section (3) of section 9 of the Law Reform Act Cap 26 leave shall not be granted unless application for leave is made inside six months after the date of the judgment. The prohibition is statutory and is not therefore challengeable under procedural provisions of the Civil Procedure Rules, more specifically order 49 rule 5 which permits for enlargement of time. That is the basis of the contention that the prohibitive nature of sub-section (3) of section 9 of the Act is capable of bearing such a liberal interpretation as would make it permissible for the court to enlarge time beyond the period of six months. We have no doubt that the prohibition is absolute and any other interpretation or view of the particular provision would be doing violence to the very clear provision of subsection (3) of section 9 of the Law Reform Act.

The decision of this court in *Girado Othieno Mahaja v Khafulu Khatwalo & another* CA No 19 of 1987 which was cited by Mr Okech, learned counsel for the appellant, is in conformity with our view of correct interpretation of the material section. The decision does not therefore advance the appellant's case.

The views of Hancox JA in which he leaned towards a liberal construction were not essential to the decision, were not expressly shared by the majority and were based on the rules of the Supreme Court of England which do not automatically apply to this jurisdiction.

In the result the appeal fails and is dismissed with costs.

That is the order of the court.

Dated and Delivered at Kisumu this 19th day of June, 1989.

J.O. NYARANGI

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JUDGE OF APPEAL

J.M. GACHUHI

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JUDGE OF APPEAL

R.O. KWACH

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AG. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR