

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CIVIL CASE NO E007 OF 2021 (O.S.)

JOSEPH NDERITU NGATIA (SUING AS NEXT FRIEND OF 'RWN', A MINOR).....APPLICANT

VERSUS

1. DR ABID MAHMOOD BUTT

2. BOARD OF TRUSTEES, NANYUKI COTTAGE HOSPITAL.....RESPONDENTS

R U L I N G

1. This is an application brought under **sections 27, 28 and 30(3) & (5)** of the *Limitation of Actions Act, Cap 22* seeking leave of the court to file suit out of time. Suit has not yet been filed; therefore this is an application under **Rule 6(1)** of **Order 37** of the *Civil Procedure Rules, 2010*.

2. I have read the supporting affidavit and perused the documents annexed thereto. The intended suit is for damages in respect of personal injuries arising out of negligence and breach of duty.

3. I am satisfied that the material facts set out in the supporting affidavit were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the Applicant until after the period of limitation prescribed by law. I am also satisfied upon the material now before the court that the requirements of **section 28(2)** and **section 30** of the Limitation of Actions Act have been met.

4. I will therefore allow the application and grant the leave sought. Let the intended suit be filed within fourteen (14) days of delivery of this ruling. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 26TH DAY OF JANUARY 2022

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 27TH DAY OF JANUARY 2022