



REPUBLIC OF KENYA



Raveco Hauliers Limited v Britam General Insurance Company Ltd (Miscellaneous Application E003 of 2022) [2022] KEHC 11794 (KLR) (12 August 2022) (Ruling)

Neutral citation: [2022] KEHC 11794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E003 OF 2022**

OA SEWE, J

AUGUST 12, 2022

BETWEEN

RAVECO HAULIERS LIMITED APPLICANT

AND

BRITAM GENERAL INSURANCE COMPANY LTD RESPONDENT

RULING

- (1) The *ex parte* Originating Summons dated June 22, 2022 was filed by Raveco Hauliers Limited for enlargement of time and for leave for the applicant to file a suit against the respondent out of time. It was also prayed that the costs of the application be provided for. The application was brought under articles 20(4)(b), 48, 50(1), 159, 165, 258 and 259 of the Constitution of Kenya as well as sections 26, 27 and 30 of the Limitation of Actions Act, chapter 22 of the Laws of Kenya; sections 1A, 1B and 3A of the Civil Procedure Act, chapter 21 of the Laws of Kenya, and order 37 rule 6(1) of the Civil Procedure Rules, among other provisions of the law.
2. The application was premised on the grounds that, vide a contract of insurance commencing on October 26, 2015 and expiring on October 25, 2016, the respondent insured the applicant's motor vehicle registration no KBT 100H/ZE 0052 MAN under policy no COMP MSA/MCOM/POL/2059133. It was the contention of the applicant that it was a term of the said contract that the respondent would be responsible for all liabilities to the insured as well as third parties in the event of an accident; and yet, when the subject motor vehicle got involved in a road traffic accident on April 2, 2016, the respondent failed, refused and/or ignored to perform its statutory and contractual obligations. Consequently, the applicant instituted Mombasa CMCC no 1486 of 2019: Raveco Hauliers Limited v Britam General Insurance Company Kenya Limited for compensation and obtained judgment on February 24, 2021.
3. It was further averred by the applicant that, being aggrieved by the decision of the lower court, the respondent filed an appeal in Mombasa HCCA no 22 of 2021: Britam General Insurance Company



Kenya Ltd v Raveco Hauliers Limited in which the appeal was allowed and the lower court suit struck out for want of jurisdiction. The applicant now contends that, by the time the appeal was decided on May 5, 2022, the limitation period for its cause of action had lapsed; hence the application for extension of time.

4. The application was supported by the affidavit of Ravinder S Mahal, sworn on June 22, 2022. Annexed to that affidavit were copies of the insurance policy, the judgment of the lower court as well as the High Court judgment on appeal to support the deponent's assertion that the delay is excusable as it was occasioned by events beyond the control of the applicant. Thus, the applicant urged the court to allow the application in the interest of justice and thereby grant the applicant an opportunity to ventilate his cause of action.

5. Section 4(1) of the *Limitation of Actions Act* is explicit that:

“The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

- a. actions founded on contract;
- b. actions to enforce a recognizance;
- c. actions to enforce an award;
- d. actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
- e. actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

6. The rationale of limitation was well explicated in *Rawal v Rawal* [1990] KLR 275 thus:

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on one hand, and on the other hand protect a defendant after he had lost evidence for his defence from being disturbed after a long lapse of time. It is not to extinguish claims.”

7. From the facts presented in the applicant's Supporting Affidavit, it is manifest that the cause of action arose on April 2, 2016. The applicant's suit was therefore filed well within time, being Mombasa CMCC no 1486 of 2019 in which he obtained a favourable judgment against the respondent. That judgment was however overturned on appeal on May 5, 2022 on the ground that the lower court lacked the jurisdiction to handle the claim. By that time, the applicant's cause of action had lapsed. Hence, the single issue for determination in this application is whether the applicant is entitled to extension of time under the *Limitation of Actions Act*.

8. Section 27(1) of the *Limitation of Actions Act*, which is the principle provision upon which the application was hinged, provides that:

“Section 4(2) does not afford a defence to an action founded on tort where—

- a. the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and



- b. the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and
- c. the court has, whether before or after the commencement of the action, granted leave for purposes of this section; and
- d. the requirements of subsection (2) are fulfilled in relation to the cause of action.”

9 It is therefore plain from the foregoing that extension of time for purposes of section 27 of the Limitation of Actions Act is specific to the limitation envisaged under section 4(2) of the Act, namely claims founded on tort; and in particular for the tort of negligence, nuisance or breach of duty. Thus, in Mary Osundwa v Nzoia Sugar Co Ltd [2002] eKLR the Court of Appeal held that:

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly Osiemo J had no jurisdiction to extend time as he purported to do on May 28, 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by consent.”

10 Similarly, in Willis Onditi Odhiambo v Gateway Insurance Co Ltd [2014] eKLR the Court of Appeal (differently constituted) reiterated its position thus:

“Under section 27, as can be gleaned from the provisions cited above, time to file a suit can only be extended where the action is founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages accorded should be in respect of personal injury to the plaintiff as a result of the tort.”

11 It is manifest therefore that the instant application is bereft of merit and must be dismissed, much as the applicant may have a genuine claim. Indeed, Lord Green MR poignantly observed in Hilton v Sultan S. Team Laundry [1946] 1KB 61, 81

“...the statute of limitation is not concerned with merits, once the axe falls, it falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled to insist on his strict rights.”

(12) In the result, the Originating Summons dated June 22, 2022 is hereby dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 12TH AUGUST 2022.

OLGA SEWE

JUDGE

