



**JNN (Suing As Next Friend of ‘RWN’, A Minor) v Butt & another (Civil Case E007 of 2021) [2022] KEHC 14638 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14638 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CIVIL CASE E007 OF 2021  
HPG WAWERU, J  
OCTOBER 27, 2022**

**BETWEEN**

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

**AND**

**ABID MAHMOOD BUTT ..... 1<sup>ST</sup> RESPONDENT  
BOARD OF TRUSTEES, NANYUKI COTTAGE HOSPITAL . 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a ruling dated 26<sup>th</sup> and delivered on January 27, 2022 herein, the court granted the applicant leave to file suit out of time. The intended suit is for damages for personal injuries occasioned by medical negligence. The real applicant is young minor suing through his father, the applicant. The aforesaid ruling also directed that the intended suit be filed within fourteen (14) days of delivery of the ruling.
2. As it turned out, that deadline was not met, as a consequence of which the applicant has come back to this court by notice of motion dated April 13, 2022 seeking the main order for enlargement of time to enable him to lodge the negligence suit against the respondents. The application is supported by the applicant’s affidavit annexed thereto. The reason given for the failure to file suit within the time-frame stipulated by the court is that because of the nature of his work as a Kenya Wildlife Service ranger, the applicant “has a work schedule that sends him to various remote locations in game parks, reserves and wildlife sanctuaries, and that more specifically he was deployed to Ruma National Park in Homabay County from February 14, 2022 to March 22, 2022”, and that therefore, presumably, he was not able to instruct counsel in good time to file the suit.
3. The respondents opposed the application by a statement of grounds of opposition dated 23<sup>rd</sup> and filed on May 30, 2022. It is averred in those grounds that the application is mischievous, misconceived and otherwise bad in law; that the application has been brought with unclean hands and is undeserving of



the court's equitable discretion; that section 27 of the [Limitation of Actions Act](#) does not contemplate nor provide for the orders sought; that the application has been brought with unreasonable delay; and that the application is devoid of merit and otherwise an abuse of the process of the court. No replying affidavit was filed. On June 20, 2022 the applicant filed a supplementary affidavit in response to the grounds of opposition in which he more or less set out the intended suit for negligence.

4. I heard the learned counsels on October 5, 2022 upon the application. I have considered their submissions in light of the relevant law and the affidavits on record. The application is essentially brought under order 50, rule 6 of the [Civil Procedure Rules](#), 2010 and not under section 27 of the [Limitation of Action Act](#), or indeed any other provision of that statute. The said rule provides as follows –

“Where a limited time has been fixed for doing any act or taking any proceedings under these rules, or by summary notice, or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of an order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

This rule is predicated upon section 95 of the [Civil Procedure Act](#), cap 21 which states –

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

5. The 14 days limitation within which to file suit after delivery of the ruling of January 27, 2022 was set by this court. The court therefore has the necessary discretion under the law quoted above to enlarge that time.
6. As to the merits of the application, the bottom-line is this: the minor in this matter who is the real applicant and intended plaintiff, suffered terrible injuries for which it is intended to seek appropriate damages, both special and general. He was let down by the adults taking care of his affairs (his father, the applicant and possibly his advocates as well). He is himself is blameless.
7. In his submissions, learned counsel for the respondents pointed out, correctly in my view, that the delay of 72 days was certainly inordinate and not plausibly explained. But he was quick to concede that the minor child at the centre of it all was blameless, and that should the court be inclined to enlarge time as sought on account of this fact, perhaps the respondents ought to be awarded costs. Learned counsel for the applicant was quick to concede costs of the application to the respondent, and stated that they (the advocates) would readily pay the costs themselves.
8. This court cannot in good conscience shut this minor out of court because of the faults of the adults around him who should have known and done better. I will therefore allow the application and grant prayer 2 of the notice of motion dated April 13, 2022. Time is hereby extended by a further fourteen (14) days from delivery of this ruling to file suit for which leave was granted under section 27 of the [Limitation of Actions Act](#). It is so ordered.
9. For avoidance of doubt prayer 3 of the application cannot be granted as a new file with a new appropriate number will have to be opened for the suit to be instituted by plaintiff. The present proceedings were instituted by originating summons.



10. The respondents will have costs of this application, hereby assessed at kshs 30,000/00, payable forthwith. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 26<sup>TH</sup> DAY OF OCTOBER 2022**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 27<sup>TH</sup> DAY OF OCTOBER 2022**

