



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISC. CIVIL CASE NO.198 OF 2019

JOHN MOGAMBI.....APPLICANT

VERSUS

KENYA POWER & LIGHTING COMPANY.....1<sup>ST</sup> RESPONDENT

THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT

RULING

1. Before me is an ex parte originating summons dated the 19/12/2019. The applicant John Mogambi seeks leave to file suit out of time and that costs of the application be provided for. The application is supported by the affidavit of John Mogambi the applicant.
2. The intended Respondents Kenya Power & Lighting Company Ltd and the Attorney General were served but failed to respond to the application.
3. In his affidavit the applicant deposes that on the 2/8/2016 he was charged with the offence of fraudulent consumption of electricity energy contrary to **section 64(i) of the Energy Act No.12 of 2006** in the Chief Magistrate's Court at Kisii. The court delivered its judgment on the 25/5/2018. He was acquitted of the charge pursuant to **Section 215 of the Criminal Procedure Code**. That he instructed the firm of Bosire Gichana & Co Advocates to file suit against the Government and Kenya Power & Lighting Company Ltd for malicious prosecution but before the suit could be filed he was attacked by robbers causing him injuries leading to mental incapacitation and was hospitalized for quite some time. That due to his illness he was unable to sign the required documents and to give further instructions to enable his advocates on record to file suit hence causing the delay. That he now seeks leave to file suit out of time as the limitation period for filing the same has lapsed. That the intended defendants will not be prejudiced in any way if the prayers are granted.
4. I have considered the application and the supporting affidavit. The court's power to extend time for said applications is discretionary and not fettered at all save that the said power must be exercised judiciously and upon defined principles in law.
5. I note that each case depends on its own merit and for the court to exercise it is discretion in favour of the applicant, the applicant must show the court that the delay in lodging the application has a plausible explanation to the satisfaction of the court and the steps the applicant took to ensure that he came to court as soon as practicable.
6. The reason given by the applicant that he got injured soon after the accident. He has attached a Discharge Summary from Kisii Teaching & Referral Hospital dated 13/8/2018. The judgment from which his claim against the intended claim originates from was delivered on the 25/5/2021.
7. I have looked at the draft plaint. In his prayers the applicant seeks general damages for wrong arrest false detention and malicious prosecution, damages including compensatory special, exemplary and punitive damages plus costs and interest.
8. On the face of the application the applicant cites the Limitation of Actions Act Cap 22 Laws of Kenya. I have read Sections 27 & 28 of Cap 22 and the said sections are clear that an application to qualify for an extension for limitation period the torts claimed should be for damages for negligence, nuisance or breach of duty. The applicant as already stated in his proposed claim/plaint seeks damages for malicious prosecution. Section 27 & 28 of the Limitations of Actions Act Cap 22 does not provide for claims based on malicious prosecution. Extension of time is limited to the nature of claims for damages limited under Section 27 of Cap 22.
9. Further the applicant claims he was unable to sign document after his injury. The judgment was read on the 25/5/2018. The applicant was admitted in hospital on the 15/7/2018 and discharged on the 13/8/2018. He was required to file suit within 12 months from the date of judgment. There is no explanation of what was happening to him between 13/8/2018 as there is further medical report to state what he alleges that he could not sign any document. This is just an observation.

10. In my view as stated the claim for damages based on malicious prosecution is not included in sections 27 & 28 of the Limitations of Actions Act Cap 22. The application has no merits and is dismissed. No order as to costs.

**DATED, SIGNED AND DELIVERED AT KISII THIS 26TH DAY OF MARCH, 2021.**

**R. E. OUGO**

**JUDGE**

**In the presence of:**

**Applicant Absent**

**Respondents Absent**

**Ms Rael Court Assistant**