



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL DIVISION

MISC. CIVIL APPLICATION NO. 642 OF 2019

GEEORGE GITONGA WANJIKU.....1ST APPLICANT

MOSES KARIUKI MUCHIRI.....2ND APPLICANT

VERSUS

SALOME NECTOR1ST RESPONDENT

FAMILY BANK OF KENYA LIMITED.....2ND RESPONDENT

RULING

1. George Gitonga Wanjiku and Moses Kariuki Muchiri (the applicants) filed this originating summons (ex parte) under sections 27 and 28 of the Limitation of Actions Act. Order 37 Rule 6 of the Civil Procedure Rules provides:

“(1) An application under section 27 of the Limitation of Actions Act made before filing a suit shall be made ex parte by originating summons supported by affidavit.

(2) Any such application made after the filing of a suit shall be made ex parte in that suit.”

2. The applicants seek the following orders:

1. That leave be granted to the applicant George Gitonga Wanjiku and Moses Kariuki Muchiri to file suit against Salome Nector and Family Bank Kenya Limited after limitation period and that the time of filing suit be extended and/or enlarged in favour of the applicants.

2. That costs of this application be provided for.

3. The application is premised on the grounds on its face plus the supporting affidavit of the 1st applicant. The main ground is that the accident forming the basis of this claim occurred on 15th December 2015. Section 4 (2) of the Limitation of Actions Act provides:

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued”

4. Any claim ought to have been filed within 3 years. A summary of the grounds and averments is that the deceased Stanley Kaguta Muchiri was a pedestrian along ngara musembi – chambers road when he was knocked down by the motor vehicle in question. The two applicants followed up the matter with the police through their advocates who wrote letters to the police and one Salome Nector (GGW2, page 7,9,10).

5. The police abstract dated 16th November 2018 (GGW2 page 3) was issued to them three (3) years after the death. The deponent has averred that even after issuance of the said police abstract it was discovered it was full of misleading information on the registration number and make of the vehicle. This caused further delays.

6. The second cause of delay was the obtaining of the limited grant adlitem (GGW-1) which was issued on 5th August 2019 while the application seeking the same was filed in the year 2017. The applicants therefore state that the delay in filing suit was not of their making.

They have annexed a copy of a draft plaint and supporting documents (GG W2 pages 1-14) to the application to show their claim.

7. Mrs Kinuthia for the applicants reiterated the averments by the 1st applicant. Counsel told this court that this file was misplaced at the registry hence their failure to get an early hearing date.

8. I have considered the application, affidavit and the annexures. The documents speak for themselves. This application was filed on 9th October 2019 after the issuance of the limited grant adlitem on 5th August 2019 without which they could not have filed the suit. It is clear that the applicants took the necessary steps to enable them file a claim but were delayed by the police and the court.

9. Even after filing this application in 2019, the matter was only heard on 14th July 2021. The request for the limited grant adlitem was filed in 2017 and the same was only issued on 5th August 2019.

10. I am satisfied that the applicants have satisfactorily explained the delay. I find them deserving of the orders sought.

11. The application is allowed and the following orders granted.

i) Leave is granted to George Gitonga Wanjiku and Moses Kariuki Muchiri to file suit against Salome Nector and Family Bank Kenya Ltd.

ii) The suit should be filed within 14 days from today's date.

iii) Costs in cause

Orders accordingly.

DELIVERED ONLINE SIGNED AND DATED THIS 30TH DAY OF JULY 2021 IN OPEN COURT AT NAIROBI

H. I. ONG'UDI

JUDGE