



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC APPL. NO. 56 OF 2020**

**MM & MMK** (suing as the legal representative

of the estate of the deceased AN).....**APPLICANT**

**VERSUS**

**HENRY MUTEGI MUNGAI**.....**1ST RESPONDENT**

**FORWARD SAVINGS & CREDIT CO-OPERATIVE**..2ND RESPONDENT

**RULING**

1. The Originating Summons herein dated 31<sup>st</sup> December, 2019 and filed on 4<sup>th</sup> February, 2020 was brought under Order 37 rule 6 Civil Procedure Rules, Section 1(A) 1B, 3(B) and 63 (c) of the Civil Procedure Act and Section 27 and 28 of the Limitations of Actions Act and all other enabling provisions of the law.

2. The application seeks orders **that this honourable court be pleased to grant the Applicant herein an extension of time within which to file the suit outside the limitation period against Henry Mutegi Mungai and Forward Savings and Credit Co-operative for recovery of damages for negligence arising out of a road accident.**

3. The Applicant's case is that on 5<sup>th</sup> April, 2015 she was involved in a road traffic accident together with her late minor son with motor vehicle registration No. KBU 619K Isuzu bus owned by the 1<sup>st</sup> Respondent. The Applicant attributes the accident to the negligence of the 1<sup>st</sup> Respondent. It is averred that the Applicant sustained serious injuries and the son sustained fatal injuries. The Applicant blames the delay in filing suit on the mental suffering and depression that she suffered following the loss of her only child.

4. The cause of action herein arises out of alleged negligence. The suit therefore ought to have been filed within 3 years as provided for under Section 4(2) of the Limitations of Actions Act Cap 22 laws of Kenya (hereinafter Act) which provides as follows:

**“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.”**

5. Section 27(1) of the Act which provides for conditions upon which time can be extended. The Applicant herein has given grounds of her mental health as what prevented her from filing suit within time. It is noted that no medical documents have been exhibited in support of the said grounds. Even in circumstances where medical documents exist, Section 22 of the Act would come into play.

6. The Applicant has exhibited a limited grant *ad litem* issued 23<sup>rd</sup> October, 2017, yet the application at hand was filed on 4<sup>th</sup> February, 2020. Seeking to file suit about five years after the cause of action arose is rather late in the day. As stated in the case of **Rawal vs Rawal (1990) KLR 275:**

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

7. So much water has passed under the bridge since the time of the accident. The proposed Defendants may have lost crucial evidence and are also entitled to their rights of raising a defence. This court is therefore not inclined to extend time herein.

8. With the foregoing, the application is dismissed.

**Dated, signed and delivered in Nairobi this 29<sup>th</sup> day of May, 2020**

**B. THURANIRA JADEN**

**JUDGE**