



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISC CIVIL APPLICATION NO 641 OF 2019

IN THE MATTER OF THE LIMITATIONS OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION TO FILE SUIT OUT OF TIME BY DAVID MWONGELA

AND

IN THE MATTER OF KENYA REVENUE AUTHORITY

JUDGMENT

1. In his *Ex parte* Originating Summons dated and filed on 8th October 2019, David Mwangela, the Applicant herein sought to be granted leave to file suit out of time. He swore the Affidavit in support of his application on the same date.
2. He stated that on various dates between the year 2016 and 2017, Kenya Revenue Authority (KRA) defamed him in the media. He averred that he was maliciously prosecuted in **Nairobi Criminal Case No 1125 of 2017** as he was acquitted under Section 215 of the Criminal Procedure Code after having been found not to have a case to answer. He pointed out that he could not file the defamation suit on time as he was awaiting the outcome of the said criminal case.
3. He thus attributed the said delay to factors beyond his control and urged this court to allow his application as prayed.
4. He relied on the provisions of Section 5 of the Public Authorities Act Cap 39 (Laws of Kenya) to argue that he was under disability as he awaited the outcome of the criminal case.
5. Section 5 of the Public Authorities Act provides as follows:-

“Notwithstanding the provisions of [section 4](#) of this Act, if, on the date when a right of action accrues for which a period of limitation is prescribed by this Act, the person to whom it accrues is under a disability, the action may be brought at any time before the end of twelve months from the date when that person ceases to be under a disability:

Provided that—

- i. this section does not apply in respect of proceedings where the right of action first accrues to a person who is not under a disability and through whom the person under a disability claims;**
- ii. this section does not apply to an action to recover a penalty or forfeiture or a sum by way of penalty or forfeiture recoverable by virtue of a written law.”**

6. It must be noted that Section 5 of the Public Authorities Act cannot be read in isolation. It has to be read together with the provisions of the Limitation of Actions Act Cap 22 (Laws of Kenya).

7. Section 22 of the Limitations of Actions Act stipulates that:-

If, on the date when a right of action accrues for which a period of limitation is prescribed by this Act, the person to whom it accrues is under a disability, the action may be brought at any time before the end of six years from the date when the person ceases to be under a disability or dies, whichever event first occurs, notwithstanding that the prescribed period of limitation

has expired:

Provided that—

i. this section does not affect any case where the right of action first accrues to a person who is not under a disability and through whom the person under a disability claims;

ii. when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under disability, no further extension of time is allowed by reason of the disability of the second person;

iii. an action to recover land or to recover money secured on a mortgage of land may not be brought by a person by virtue of this section after the end of thirty years from the date on which the right of action accrued to that person or to some person through whom he claims;

iv. this section does not apply to an action to recover a penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of a written law;

8. The disability referred to in Section 22 of the Limitation of Actions Act relates to an incapacitating condition that disables such party to institute a suit within the prescribed period set out in Section 4 of the Limitation of Actions Act. This disability would include infirmity of the mind or body so that for such party, time would begin running from when such party would be aware of circumstances surrounding his or her case.

9. It is therefore clear from Section 22 of the Limitation of Actions Act that inability to file suit due to circumstances beyond a party's control would not amount to disability which would entitle such party to seek extension of time to file suit out of time.

10. Section 4(2) of the Limitations of Actions Act 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:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.”

11. Section 27 of the Limitation of Action Act states that:-

Extension of limitation period in case of ignorance of material facts in actions for negligence, etc.

(1) 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 the purposes of this section; and

(d) the requirements of subsection (2) are fulfilled in relation to the cause of action.

(2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—

(a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and

(b) in either case, was a date not earlier than one year before the date on which the action was brought.

(3) This section does not exclude or otherwise affect—

(a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or

(b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.

12. Bearing in mind that the Applicant herein was seeking to have extension of time to file suit in a case of defamation, it was evident that such extension could not be granted as it did not fall within the provisions of Section 27 of the Law of Limitations Act.

DISPOSITION

13. For the foregoing reasons, the upshot of this court's decision was that the Applicant's *Ex parte* Originating Summons dated and filed on 8th October 2019 was not merited and the same is hereby dismissed. There will be no order as to costs.

14. Orders accordingly.

DATED and DELIVERED at NAIROBI this 27th day of October 2020

J. KAMAU

JUDGE