



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISC. CIVIL APPL. NO. 310 OF 2018
IN THE MATTER OF THE EXTENSION OF LIMITATION PERIOD FOR FILING SUIT
AND
IN THE MATTER OF THE ESTATE OF
MARTHA WANGARE NYOIKE (DECEASED)

RULING

The *ex parte* applicant herein C W M is the daughter of the deceased, Martha Wangare Nyoike who died on the 3rd August 2012 following a road traffic accident along Nairobi-Nakuru road involving motor vehicle KAN 602C a Toyota *matatu*. She was a pedestrian.

By an application dated 20th November 2018, the applicant approached this court under provisions of Section 1A, 1B, 3, 3A and 79G of the **Civil Procedure Act and Order 42 rule 6 and order 50 Rule 6 of the Civil procedure Rules** for an order

- **That the Limitation period of filing suit be extended in favour of the applicant to allow filing of a suit out of time.**

The grounds as appears on the face of the application are that the applicant who is the only child of the deceased did not know how to seek compensation as she was then a minor, and struggled from depression and shock, and that the traffic case is still on going.

The provisions under which the application are based are completely out of place and misplaced, save for **Section 3A of Civil Procedure Act** that invokes the inherent powers of the court.

Order 42 rule 6 of Civil Procedure Rules deals with stay of execution pending appeal.

They therefore irrelevant.

The correct legal provisions that underpin extension of time to file suit out of time is the **Limitation of Actions Act cap 22 Laws of Kenya, Sections 27 and 28.**

Section 27 thereof states the creteria for leave to be granted. A party must prove that material facts relating to the cause of action were facts of a decisive character which were outside the knowledge of the applicant.

The claim sought to be filed is one of the tort of negligence which should be filed within the statutory period of three (3) years from the date of the alleged accident. The claim by the date of filing this application was three years outside the statutory period. It ought to have been filed by the 30th August 2015.

The applicant has not told the court what age she was nor her current age. It is not further stated with candid and sufficient proof why the family of the deceased did not take any action to file the compensation claim within the three year period.

Ignorance is no defence [\[LO1\]](#) in law. However mistake or misrepresentation may be good defence if sufficiently explained.

Section 27(1) of the Act Limitations of Actions Act requires that the requirements of **Section 27(2)** be fulfilled in relation to the cause of Action (see above).

- See **Ngari & Another –vs- Odero (1999)2 EA 24** – where the court held that such requirements of Section 27(2) are stringent and must be met for leave to be granted.

The grounds and supporting affidavit to the application as filed are sketchy and lacks detail to the extent that the court is unable to discern exactly the real reasons if any, why the claim was not filed within time.

The Court Appeal in **Dominic Njuguna Wairimu –vs- Joseph Wambugu Kibe (2018) e KLR** rendered that material facts of decisive character that were not in the knowledge of the applicant must be proved. None have been demonstrated in this application.

Despite the unfortunate circumstances sparingly stated in the supporting affidavit, I am unable to grant leave for filing of the compensation claim out of time.

The application dated 20th November 2018 is therefore disallowed for lack of material substance.

It is so ordered.

Dated, delivered and signed at Nakuru this 20th Day of June 2019.

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J.N. MULWA

JUDGE

[\[LO1\]](#)