

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CIVIL CASE NO. 6 OF 2018

NELSON ROIMAN NAISHO.....PLAINTIFF

VERSUS

ALICE WAGUNDA.....1ST DEFENDANT

PETER OTIENO.....2ND DEFENDANT

RULING

1. This is an ex-parte application seeking leave of this court to file a suit for recovery of damages arising out of a motor vehicular accident.
2. The application was brought under certificate of urgency and was certified as such. It is brought under section 27 of the Limitation of Actions Act [Cap. 22] Laws of Kenya and rule 37 of the 2010 Civil Procedure Rules.
3. The application is supported by four grounds on the face of the *ex-parte* originating summons. In grounds 1 and 2, the applicant has stated that the time for filing the proposed suit has elapsed and that the delay in filing the same is not deliberate. In grounds 3 and 4 the applicant has stated that the delay in filing this application is not inordinate and that leave is necessary, since the time has elapsed.
4. Furthermore, the application is supported by the applicant's affidavit dated 19/1/2018. In that affidavit the applicant has deposed to the following major matters. That on 10/6/2012 the applicant was involved in a road traffic accident, in regard to which he has annexed a police abstract report marked as annex NRR1.
5. Furthermore, the applicant states that he was travelling in his vehicle, when the accident occurred which involved the motor vehicle of the 2nd respondent.
6. As a result of the accident, the applicant sought medical treatment. Additionally, the applicant states that he was advised by his counsel that the claim was time barred, since it is late by 2 years. It is for this reason that he has filed this application.
7. I find from the unopposed affidavit evidence of the applicant, that he was involved in a road accident along Narok – Mai Mahiu road. As a result, he sought medical treatment. I also find that the delay in filing this application is not inordinate.
8. The upshot of the foregoing is that the applicant has made out a case for the grant of leave to file a suit out of time in terms of prayer 2 of the ex-parte originating summons dated.
9. The application is hereby allowed.
10. There will be no order as to costs.

Ruling delivered in open court this 19th day of April, 2018 in the presence of Ms Cheptoo for *ex-parte* applicant.

J. M. Bwonwonga

Judge

19/4/2018