



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 243 OF 2018

SALIM RAZA.....APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

TARIR MOHAMMED CHAUNDARY.....4TH RESPONDENT

RULING

The Applicant herein has moved this court by way of an Originating Summons dated the 16th day of April 2018 seeking extension of time within which to file suit against the Respondents and the costs of the application.

The grounds in support of the application are that the period within which to file the suit has expired, that the delay is not inordinate and that no prejudice will be occasioned to the Respondents if the extension is granted.

In the Supporting affidavit sworn by Salim Raza, it is deponed that in the year 2012, the applicant instructed the firm of Vusa Onsembe & Mambiri Advocates to defend him in a criminal matter in Makadara Law Courts, being Criminal Case No. 3734 of 2009 which was concluded on 9th October, 2016.

On 10th March 2017, the applicant started the process of instituting a civil suit for malicious prosecution but in the process, his advocate passed away as a result of which the suit was not filed by the firm of Advocates where the advocate was working. He later changed his Advocate by which time, the 12 months period within which to file the suit had lapsed and hence this application.

He avers that the Respondents will not suffer any prejudice as they will have the opportunity to defend the suit once it is filed. He depones that if the application is not granted, he will suffer greatly as he will not be able to get compensation from the Respondents for malicious prosecution.

The application proceeded by way of oral submissions which the court has duly considered. The application herein has been made against the Inspector General of Police, Director of Public Prosecution, the Attorney General and Tarir Mohammed Chaundry. As against the 1st-3rd defendants, the law is clear that any action in tort against the said Respondents has to be brought within one year from the date when the cause of action arose.

The applicant having failed to file the suit within that prescribed period has moved the court seeking extension of time within which to do. I have considered the reason given for the delay in filing the suit. It is deponed that the same was caused by the death of the applicant's Advocate who was prosecuting the criminal matter who passed away while in the process of instituting the civil matter for malicious prosecution and hence the delay.

I have perused the death certificate marked as SR-2 and the same shows that the said Advocate passed away on the 10th May 2017. The criminal case at Makadara was concluded on 9th October, 2016 when the judgment was delivered. It is noted that since the advocate passed away on 10th May 2017 the applicant took almost an year to file the present application. The delay is long but it has been explained though not sufficiently as the court has not been told when the applicant learnt about the death of his advocate and when he engaged the services of his current advocate.

However, in the interest of justice, I will allow the application and direct that the suit be filed within 21 days from the date of this ruling. No

orders are made on the costs of the application.

Dated, Signed and Delivered at Nairobi this **28th** day of **June, 2018**.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... *For the Applicant*

..... *For the Respondents*