



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL NO. 473 OF 2018

PHILIP OCHIENG OMONDI.....1ST APPLICANT

ABUBAKAR SALIM ITONGA.....2ND APPLICANT

VERSUS

ATTORNEY GENERAL.....RESPONDENT

RULING

1. The originating summons dated 12th September, 2018 seeks orders that leave be granted to the Applicants to file a suit against the respondent for malicious prosecution out of time.

2. It is stated in the grounds and the affidavit in support of the application that the Applicants were acquitted of criminal charges on 6th April, 2017 and are desirous of instituting a suit of malicious prosecution. That the Applicants applied for certified copies of the ruling and made diligent follow ups on the same but were not supplied with the same until 20th July, 2018 but by then the time within which to file suit had lapsed.

3. I have considered the application and the submissions of the counsel for the Applicants.

4. Section 27(1) of the limitation of Actions Act Cap 22 Laws of Kenya provides for exercise of the limitations period as follows:

“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.”

5. Section 27 of the limitation of Action Act therefore provides for claims where time within which to file suit can be extended to actions founded on tort where the claim is for damages for negligence, nuisance or breach of duty or consist of or include damages for personal injuries.

6. The Court of Appeal discussed what circumstances that afford a court jurisdiction to extend time to file suit under Section 27 of Cap 22 in the case **Mary Ofundwa v Nzoia Sugar Company Limited Kisumu CA No. 244 of 2009** thus:

“This section clearly lays down the circumstances in which the court, would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts and must relate to the torts of negligence, nuisance or breach of duty

and the damages claimed are in respect of personal injuries to the Plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort.”

7. With the foregoing, the Applicant’s claim which seeks damages for malicious prosecution is therefore not included amongst the cases where time can be extended. The application cannot therefore succeed. Consequently, I dismiss the application.

Dated, signed and delivered in Nairobi this 29th day of Nov., 2018

B. THURANIRA JADEN

JUDGE