



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**MISC CIVIL. NO. 236 OF 2014**

**SOSPETER MWANGI.....PLAINTIFF/APPLICANT**

**VERSUS**

**HUSSEINBHAI HEBATULLAH.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**NATION MEDIA GROUP LIMITED.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The Applicant moved this court vide a Notice of Motion dated 28<sup>th</sup> February, 2014 seeking orders that;
  - (a) This Honourable Court be pleased to grant leave to the Plaintiff/Applicant to file suit out of time notwithstanding that the time allowed in law to do so has lapsed;
  - (b) This Honourable Court be pleased to deem the annexed Plaint as duly filed upon payment of the requisite court fees and the matter be fixed for hearing on priority basis; and
  - (c) Costs of this application be in the cause.
2. The Motion is premised on the grounds on the body of the application and on the Supporting Affidavit of **SOSPETER MWANGI KARANJA**. The cause of action in this suit arose on 28<sup>th</sup> August, 2002 and the grounds in support of the application are that the Applicant was unwell and was therefore unable to file the suit in time.
3. The Application is opposed by the 1<sup>st</sup> Defendant/ Respondent through a Replying affidavit dated 27<sup>th</sup> January, 2015 wherein he states that the Applicant has not given a justifiable reason for the delay in filing the intended Suit and the purported ailment is just an excuse and does not explain the delay of over 12 years. The Respondent avers that from the judgment in petition no. 4 of 2012, annexed to the Applicants Supporting Affidavit, the Applicant has filed and prosecuted several cases from the year 2002 to the time of filing the instant Application. The 2<sup>nd</sup> Defendant has neither appeared in court nor filed any Replying Affidavit in this Application.
4. The court is alive to the fact that the power to extend time is discretionary and its not fettered at all, save that the said power should be exercised judiciously and upon defined principles of the law. In the case of **Aviation Cargo Support Limited v St. Mark Freight Services Limited, Civil Application 98 of 2013, [2014] eKLR**, the Court of Appeal stated that:

**“The order whether or not to grant extension of time or leave to file and serve record of appeal out of time is discretionary. Such discretion is exercised judiciously with a view to doing justice. Each case depends on its own merits. For the Court to exercise its discretion in favour of an applicant, the latter must demonstrate to the Court that the delay in lodging the record of appeal is not inordinate and where it is inordinate the applicant must give plausible explanation to the satisfaction of the Court why it occurred and what steps the applicant took to ensure that it came to Court as soon as was practicable.**

**In the normal vicissitudes of life, deadlines will be missed even by those who are knowledgeable and zealous. The Courts are not blind to this fact. When this happens, the reason why it occurred should be explained satisfactorily including the steps taken to ensure compliance with the law by coming to Court to seek extension of time or leave to file out of time.” (emphasis added).**

5. The underlying principles that a court should consider in exercising this jurisdiction were laid down by the Supreme Court in **Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others [2015] eKLR**, thus

***(i) extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;***

***(ii) a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;***

***(iii) whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;***

***(iv) where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;***

***(v) whether there will be any prejudice suffered by the respondents, if extension is granted;***

***(vi) whether the application has been brought without undue delay; and***

***(vii) whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied].***

6. In the instant application, the cause of action arose in the year 2002 and this application was filed in the year 2014. The law provides an action for libel or slander may not be brought after the end of twelve months from the date the cause of action arose. The Applicant has explained that he contracted a rare skin disease while in detainment in the criminal case from which the alleged defamatory statements arose. If the criminal case was terminated on 5<sup>th</sup> May, 2004 the Appellant would have been psychologically released and settled to file the Suit as from that time. To wait for 12 years to file a suit which by law is supposed to be filed within 1 year is quite unreasonable. Further it is clear that the Applicant has been in court with other related cases throughout that period regardless of the ailment and therefore this court is not persuaded by the reason for the delay.

7. This court finds that the Applicant has not given a reasonable cause for the delay and in the premises the application is hereby dismissed with costs.

**Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of June, 2017**

.....

**L. NJUGUNA**

**JUDGE**

**In the presence of:**

.....For the Applicant

.....For the Respondent