



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
MISC CIVIL APP. NO. 130 OF 2017(O.S)

M W M

(SUING AS A MINOR THROUGH THE NEXT FRIEND)

M N K.....APPLICANT

VERSUS

NOBEL INGIRANEZA.....1ST RESPONDENT

SYMPOSIA CONSULT LIMITED.....2ND RESPONDENT

RULING

1. On 29th March, 2017, the Applicant, being the mother to M W M a minor, filed an Originating Summons seeking extension of time to file a suit outside the Limitation period against the Respondents for recovery of damages for negligence. According to the Supporting Affidavit of M N K, the cause of action arose on 21st July, 2013 when the minor was ran down by a car belonging to the 2nd Respondent and driven by the 1st Respondent.

2. The Application is properly brought under the relevant law and the effect of section 27 of the Limitation of Actions Act was elaborated in **Mary Osundwa v Sugar Company Limited [2002] Eklr** where the Court of Appeal held that: ***“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 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..”***

3. In this Application, the cause of action is founded on the tort of negligence and the applicant has explained the reasons for the delay in filing the Suit in that there were matrimonial conflicts between her and her husband.

4. The underlying principles that a court should consider in exercising its jurisdiction to grant extension to file suit out of time were laid down by the Supreme Court in **Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others [2015] eKLR**, which are

(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”.

5. I find that there was undue delay in filing this application but the Respondents will not be prejudiced in any way by an extension of time to file the suit. In the interest of justice and under the inherent powers of this court, the application dated the 29th March, 2017 is hereby granted as prayers. Costs in the cause.

Dated, signed and delivered at Nairobi this 28TH day of June, 2017

.....

L. NJUGUNA

JUDGE

In the presence of:

..... **for the Applicant**

.....**for the Respondent**