



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI CIVIL DIVISION**  
**CIVIL SUIT NO. 444 OF 2008**

**VIRGINIA SIMPAO MUKAMI**

**(Suing as the legal representative of the Estate of**

**William Lasiti Mungai Ole Kure (Deceased).....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

**SOLOM TOROREI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application before this court is a Notice of Motion Application dated 20<sup>th</sup> February, 2017 brought under section 27 (1) of the Limitation of Action Act in which the Plaintiff prays for orders that:-

- a. Leave for the filing of suit out of time be granted to the Plaintiff in respect to the accident which occurred on 15.12.2000 involving Motor Vehicle Registration Number KXU 183 and GKA 264C.
- b. The leave granted to apply retrospectively;
- c. The suit be validated by the leave granted and be deemed as duly and properly filed; and
- d. That costs of this Application be in cause.

2. The Motion is premised on the grounds on the body of the application and the Supporting Affidavit of VIRGINIA SIMPAO MUKAMI. Briefly stated, the suit against the Government was instituted on 3/4/2010 by which time, the statutory period within which to file the suit against the 1<sup>st</sup> defendant had lapsed under section 3(1) of the public Authorities Limitations of Actions Act which provides; ***“No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.”***

3. Among the grounds advanced by the Plaintiff is that the widow of the deceased went into great depression hence the delay in filing the suit. She has also blamed the previous Advocates on record for negligently filing the suit without seeking leave and has urged the court not to visit the advocate’s mistake on an innocent litigant. The Application was properly served upon the Attorney General as evidenced by the Affidavit of Service dated 7<sup>th</sup> March, 2017, however, there was no response from the Defendants.

4. The instant application is premised on Section 27 (1) of the Limitation of Actions Act which provides that,

**“27. Extension of limitation period in case of ignorance of material facts in actions for negligence, etc.**

**(1) 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.**

**(2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—**

**(a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and**

**(b) in either case, was a date not earlier than one year before the date on which the action was brought.**

**(3) This section does not exclude or otherwise affect—**

**(a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or**

**(b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.”** The section applies in cases of suits for claims which must include damages for personal injury to any persons. I find it relevant and applicable in this case.

5. The power to extend time is discretionary and 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 in determining an application to file and serve a record of appeal out of time stated:

**“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).**

6. I have considered the circumstances of this case which include the previous Advocate’s conduct in the matter, that the Defendant did not apply to have the suit struck out and even after service of the instant application, they did not respond and no grounds of objection were filed. I find that by allowing the instant application, the Defendants will not suffer prejudice in any way and in any case, the Plaintiff stands to be prejudiced if the instant application is not allowed.

7. In the result, the application dated 20<sup>th</sup> February, 2017 is hereby allowed as prayed. Costs in the cause.

Dated, Signed and Delivered at Nairobi this 28<sup>th</sup> Day of June, 2017.

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**L. NJUGUNA**

**JUDGE**

**In the Presence of**

..... For the Appellant

..... For the 1<sup>st</sup> Defendant

..... For the 2<sup>nd</sup> Defendant