



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CIVIL CASE NO. 3 OF 2017**

**GEOFFREY MBUGUA MUHORO.....PLAINTIFF**

*versus*

**THE HON THE ATTORNEY GENERAL.....RESPONDENT**

**JUDGMENT**

1. By ex parte originating summons dated 15<sup>th</sup> May 2017 Geoffrey Mbugua Muhoro seeks leave of this court to file suit against the Attorney General out of the limitation period for malicious prosecution.
2. That summons is based on the grounds that the applicant was arrested on 25<sup>th</sup> June 2014 and charged with the offence of threatening to murder contrary to section 223(1) of the Penal Code; that the respondent maliciously prosecuted the applicant; that the applicant was on 10<sup>th</sup> July 2015 acquitted under section 210 of Criminal Procedure Code; that the arrest and prosecution were malicious.
3. The applicant deponed in his affidavit in support of the summons that after the conclusion of his criminal trial he requested for a copy of the proceedings of that trial but that the said proceedings were not availed until 6<sup>th</sup> September 2016. That he could not file his action against the Attorney General for malicious prosecution without those proceedings. That the delay in filing his said action was not occasioned by failure on his part but was due to unavoidable circumstances

**ANALYSIS AND DETERMINATION**

4. Section 3 of the Public Authorities Limitation Act Cap 39 is the section which provides the limitation period for action against the government or local authority in action founded in tort. That section 3(1) is in the following terms:-

***“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.”***

5. Section 5 of Cap 39 however provides for extension of that limitation period. It is in following terms:-

***“5. Notwithstanding the provisions of section 4 of this Act, if, on the date when a right of action accrues for which a period of limitation is prescribed by this Act, the person to whom it accrues is under disability, the action may be brought at any time before the end of twelve months from the date when that person ceases to be under disability;***

**Provided that –**

***(i) This section does not apply in respect of proceedings where the right of action first accrues to a person who is not under disability and through whom the person under a disability claims;***

***(ii) This section does not apply to an action to recover a penalty or forfeiture or a sum by way of penalty or forfeiture recoverable by virtue of a written law.”***

6. There is need to interrogate section 5 to find out if the applicant can obtain relief that he seek for extention of limitation period. Section 5 provides that a party who is under disability can file an action within twelve months from when the disability ceases. The applicant deponed that his criminal trial did not end until 10<sup>th</sup> July 2015. It ended with his acquittal. Why did he not then file the action against the Attorney General for malicious prosecution either immediately or within twelve months from the date of acquittal? The applicant stated that he was unable to file his action because proceedings of his criminal trial had not been availed.

7. There is no evidence adduced showing when, if at all, the applicant applied for proceedings. The applicant relies on a stamp of the trial court on the typed proceedings which certified the proceedings as true copy of the original. That stamp is in the following words:-

***“I certify that this is a true copy fo the original (sign) 6.9.16 Magistrate Nanyuki.”***

8. With respect that does not suffice to prove that the applicant from the date his acquittal was pronounced was under a disability within the meaning of **section 5 of Cap 39**.The applicant needed to show he applied for the proceedings and the court delayed in providing them and did not infact provide them until 6<sup>th</sup> September 2016. The applicant failed to do so.

9. **Section 6** of Cap 39, thereof, adopts the application of the Limitation of Actions Act Cap 22 in particular part III. Under part III of that Act parties are afforded extention of limitation of actions. That section provides:-

***“27(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 or 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.***

10. The Court of Appeal discussed what circumstances afford a court jurisdiction to extend time to file suit under **section 27 of Cap 22** in the case **MARY OFUNDWA versus NZOIA SUGAR COMPANY LIMITED KISUMU CA No. 244 of 2000** 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 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. According Osiemo J. had no jurisdiction to extend time as he purported to do on 28<sup>th</sup> May 1999. That the order was by consent can be neither here nor there, the parties could not confer jurisdiction on the judge by their consent.”***

11. The Court of Appeal by its decision here above clearly set the limits of the courts in extending time to actions founded in tort of negligence, nuisance or breach of duty and damages claimed in respect to personal injuries. The applicant's draft plaint prays for:-

***“(a) Damages for wrongful arrest, confinement, malicious prosecution and injury to his character and reputation.***

***(b) Costs of the suit and interest thereof.”***

The proposed claim of the applicant does not fall within the provisions of section 27 of Cap 22. It follows the applicant cannot obtain extension to file his action under section 27 cap 22.

12. On the whole the applicant's originating summons dated 15<sup>th</sup> May 2017 is devoid of merit and is hereby dismissed.

**DATED and DELIVERED at NANYUKI this 3<sup>rd</sup> day of AUGUST 2017**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant: Njue

For Plaintiff: .....

For Defendant: .....

**COURT**

Judgment read in open court.

**MARY KASANGO**

**JUDGE**