



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MALINDI**

**CIVIL CASE NO. 26 OF 2015**

**JAMES KAHINDI SIMBA.....PLAINTIFF**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION**

**INSPECTOR GENERAL OF POLICE**

**THE ATTORNEY GENERAL.....DEFENDANTS**

**J U D G M E N T**

The respondent in his amended plaint dated 19<sup>th</sup> February 2016 is seeking damages for malicious prosecution. The respondents raised a preliminary objection dated 17<sup>th</sup> August 2016. The objection is grounded on the contention that the suit is bad in law as it offends the provisions of the Public Authorities Limitation Act, Cap 39. It is submitted that the plaintiff's suit ought to have been filed within a period of one year as provided by section 3(1) of the Public Authorities Limitation Act.

**Mr. Gicharu** appeared for the plaintiff/respondent. Counsel maintains that the plaintiff obtained leave of the court to file the suit. The court granted the plaintiff leave on 23/6/2015 and directed the plaintiff to file the suit within 30 days. The plaintiff was late by only one month. The suit was filed on 16/7/2017 within the 30 days extended period.

From the above submissions, it is clear that the suit was properly filed. The court extended the time for filing the suit. Although no court orders were annexed by the plaintiff to confirm that contention, I am satisfied that time to file the suit was enlarged. The plaintiff will be able to prove that contention during the hearing. The preliminary objection does not resolve the dispute.

In the end, I do find that the preliminary objection is not merited and is hereby dismissed. Costs shall follow the outcome of the main suit.

**Dated and signed at Meru this.....day of August 2017.**

**SAID CHITEMBWE**

**JUDGE**

**Dated, signed and delivered at Malindi this 20<sup>th</sup> day of September, 2017**

**WILDON KORIR**

**JUDGE**