



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NANYUKI
CIVIL MISC.APPL NO. 7 OF 2015

PETER LAWRENCE KINYUA MWAI.....APPLICANT

-VERSUS—

ATTORNEY GENERAL & 7 OTHERS.....RESPONDENT

RULING

1. **PETER LAWRENCE KINYUA MWAI** the applicant filed a Notice of Motion dated 8th October, 2015 which is under consideration.
2. The applicant acted in person and it is in that background I have considered his prayer in his Notice of Motion application. By that Notice of Motion he seeks the following prayer:

“That the court may be pleased to grant permission for a leave (sic) to file suit out of time against the Attorney General and 7 others mentioned there above for malicious prosecution.”
3. The respondents that applicant seeks leave to file a suit against them out of time are 5 police officers, the Attorney General and Christopher Muriuki Mwai. The latter is the applicant's brother.
4. Although in his prayer in the notice of Motion, as it can be seen above the applicant seeks leave to file a case for malicious prosecution in his supporting affidavit it seems he seeks leave to file a case against the police for the alleged torture he suffered in their hands.
5. The application was heard inter parties, in accordance with the court order. Ms Masaka appeared for the Attorney General and the five police officers while Christopher Mwai appeared in person.
6. The applicant and Christopher Mwai in their submissions before court engage into what I can only describe as a family feud. Their misunderstanding began in 1960's and in that regard they have filed several cases before several courts. At one time the applicant was charged with giving police false report relating to matters touching on his brother Christopher Mwai. It is that prosecution which the applicant now wishes to show was malicious and which also led to the alleged torture by police. I have absolutely no intention of going to the merits or demerits of the applicant's allegations that Christopher Mwai stole his identity in 1960. What is for consideration before me is whether the applicant should be given leave to file a case out of time.
7. If what the applicant seeks is leave to file a case for malicious prosecution then I find that he has failed to state why the same was not filed within one year of its occurrence. Indeed as correctly stated by Ms. Masaka the applicant fails to meet the threshold for leave to be granted. The applicant who after all seeks

the court to exercise its discretion in his favour failed to state when the criminal prosecution occurred. All that the applicant states is that he was unwell in the middle of 2011 and on 2nd December, 2011 he was admitted in hospital and was discharged on 28th January, 2012. That thereafter he continue to attend the doctor's clinic. That in the year 2014 he was involved in a motor accident. He concluded by stating that he was unwell from 2011 to 2015.

8. I decline to grant leave to the applicant to file for malicious prosecution out of time because of lack of clarify of when the period for filing that claim expired in relation to his alleged illness. If indeed applicant has been unwell from 2011 to 2015, he should not have been riding his bicycle on 24th jMay, 2014 when he was allegedly involved in a road accident.

9. If what the applicant seeks is leave to file a claim for breach of fundamental right, since he alleges he was tortured by police, then under the Constitution of Kenya there is no Limitation to bringing that action, and accordingly no leave is required.

10. It is in that back ground that I dismiss with costs the Notice of Motion dated 8th October, 2015.

Dated and Delivered at Nanyuki this 25th February, 2016

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

C/A Kirunja

Plaintiff

Ms. Masaka for 1st to 7th for the defendant

Peter Lawrence in person

1st to 7th Defendants

Court

Ruling delivered in open court

MARY KASANGO

JUDGE