

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL SUIT NO. 1198 OF 2013

SWIFT COMMERCIAL ESTABLISHMENT LTD...1ST APPLICANT

EQUATOR HOLDINGS HAULERS LTD2ND APPLICANT

VERSUS

THE COMMISSIONER OF POLICE1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

This is an ex-parte application by way of Originating Summons under Sections 3, 27 and 28 of the Limitation of Actions Act Cap, 22 Laws of Kenya and Order 37 Rule 6 (1) of the Civil Procedure Rules for orders that the applicants be granted leave to file suit out of time.

The applicants who are based in Uganda were operating long distance transport business through the Kenyan territory. From the draft plaint annexed to the application the plaintiffs cause of action arises from the destruction of their transport vehicles said to have been burnt/stolen and extensively damaged following the post election violence in Kenya.

The application is premised on the grounds set out on the face of the application and a supporting affidavit sworn by one Peter Ssajjabbi. The grounds are that delay in filing the suit in time was neither intentional nor inordinate as it was caused by delay in obtaining appropriate police abstracts from various Police Stations and Witness Statements from witnesses who resided out of the country. The applicants also tried to negotiate with the Kenya Government through diplomatic channels for the settlement of their claim which has borne no fruit and that further necessary documentation touching on the claim took time to obtain.

It would appear that although this is an *ex-parte* application the respondents were served because there is a memorandum of appearance and Notice of Preliminary Objection on record. Going by the provisions of Sections 3, 27 and 28 of the Limitation of Actions Act aforesaid, the plaintiffs have persuaded the court to grant the orders sought.

The preliminary objection raised by the respondents cannot withstand the interests of justice and no prejudice can be said shall befall the respondents because it is based on Section 15 of the Civil Procedure Act which relates to the place of filing suit. It is common knowledge that the seat of both respondents is in the capital city, Nairobi. Therefore the applicants cannot be said to be wrong in lodging their claim in the High Court based in Nairobi.

Accordingly leave is hereby granted to the applicants to file suit out of time, the suit shall be filed within 14 days of today and there shall be no order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this 19th Day of March, 2015.

A.MBOGHOLI MSAGHA

JUDGE