



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC. CIVIL APPLICATION NO. 681 OF 2014**

IN THE MATTER OF APPLICATION BY NGALA DANIEL NGALA & FRANCIS DANIEL NGALA  
(Suing on behalf of the estate of Daniel Charo Ngala -Deceased) FOR EXTENSION OF LIMITATION  
PERIOD ALLOWED UNDER LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA.

AND

IN THE MATTER OF THE ACCIDENT INVOLVING DANIEL CHARO NGALA (Deceased)

(EX PARTE)

**RULING**

1. Before me is the Originating Summons dated 8<sup>th</sup> October, 2014 seeking orders that the period within which the Applicant ought to file the suit against Lawrence Karugu, who is the alleged owner of motor vehicle registration number KBB 650B Toyota Hiace, and Joseph Matere his alleged driver that caused an alleged accident resulting to the death of the deceased be extended.
2. The summons is supported by the affidavit of the Applicant sworn on 8<sup>th</sup> October, 2014.
3. The reasons advanced for the delay are that the family of the deceased were engaged in the burial and acquisition of letters of administration and an attempt to settle the matter out of court. **Section 4 (2)** and **Section 27** of the Limitation of Actions Act provides as follows:-

***“4 (2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued.”***

And Section 27 (1) is in the following terms:-

***“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 written law independently of contract or written law; and***
- (b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consists of or include damages in respect of personal injuries or 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.”***

4. In **Mary Osundwa v. Nzoia Sugar Company Limited [2002] eKLR**, court said as follows of Section 27 (1) of the Limitation of Actions Act:-

*“This Section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That 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. Accordingly Osiemo, J. had no jurisdiction to extend time as he purported to do on 28th May, 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent.”*

5. That decision correctly interpreted the provisions of Section 27(1) of the Limitation of Actions Act and there is no basis to depart from the same. In view of the foregoing and the Applicant having given sufficient reason as to the delay in filing the suit I allow the application. Orders accordingly.

**Dated, Signed and Delivered in open court this 13<sup>th</sup> day of March, 2015.**

**J. K. SERGON**

**JUDGE**

**In the presence of:**

**N/A for the Applicant.**