



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS,**  
**MISC. APPLICATION NO 841 OF 2013**

**DAVID MBATIA (Suing on behalf of the ESTATE OF ISAAC GACATHI  
MBATIA.....PLAINTIFF**

**-VERSUS-**

**NAIROBI CITY COUNTY.....  
DEFENDANT**

**RULING**

This is an application brought by the plaintiff/applicant by way of originating summons under section 27 of the Limitations of Actions Act order 37 Rule 6 c(1) of the Civil Procedure Rule and section 3A of the Civil Procedure Act, the applicant seeks the following orders;

1. That the court be pleased to grant leave to file suit out of time against the respondent and upon grant of such leave the draft plaint annexed be deemed duly filed upon payment of requisite fees.
2. That costs of the application be provided for.

The application is supported by the affidavit of David Mbatia and the grounds stated on the face of the application that;

- a. That the applicant is the Legal Co-Administrator to the estate of ISAAC GACHATHI MBATIA (DECEASED) who died on or about 4<sup>th</sup> March 2009 as a result of a street light falling on him on the material date occasioning him fatal injuries to which he succumbed thereafter.
- b. That the Letter of Administration Intestate, were issued to the applicant and TABITHA NJERI MBATIA on the 18<sup>th</sup> day of June 2012, long after the time to file suit against the defendant being a local authority had lapsed.
- c. That the applicant's then advocate advised him on filing the suit; however the amount demanded was beyond his reach at the time.
- d. That the applicant was not able to raise the money until last year when through charity he was able to raise the money needed and went ahead to instruct the firm of M/s Gitau Mwara & Co. Advocates to file the suit.
- e. That the matter was heard in court by Honorable Justice Khamoni who then dismissed the application on the grounds that the administration ad litem after 5 years had expired and a full grant of letters of administration had to be applied for and obtained.
- f. That the full grant of Letters of Administration has since been applied for and obtained.

- g. That the applicant and Tabitha Njeri Mbatia were made Co-administrators of the estate of the deceased.
- h. That Khamoni J. directions have since been complied with.
- i. That it is only fair and just and in the interest of justice that the applicant be allowed to file suit out of time against the respondents for the recovery of damages under the fatal accidents Act and the Law Reform Act.

The applicant deposes that he is a co-administer of the estate of Isaac Gachathi Mbatia. That on the 18/6/12 he was issued with letter of administration but due to his financial status he was unable to raise the legal fees necessary to acquire legal assistance. That through charitable means 5 years later he was able to raise the necessary funds to get legal assistance. He filed an application to file suit in the High Court and the matter was heard by Justice Khamoni who ruled that the period given for the letter of administration ad litem had expired and a new application for a full grant of letter of administration was needed to file suit. He thereafter applied for a full grant and it was granted on the 18/6/12. That it is only fair that the court grants him leave to file suit of time against the respondent to enable him recover damages under the Law Reform Act and the Fatal Accidents Act. That he has a good claim against the defendant as can be seen from the draft plaint attached, that the delay to file the application is not inordinate but is also due to the fact that he was financially incapacitated.

I have considered the application read affidavit and the annexures filed. The plaintiff filed an application before J. Khamoni in the year 2010. After the originating summons was dismissed on the 28/5/10 the applicant does not explain what he did between 2010 and 2012 but a grant was issued on the 18/6/12. After the grant was issued the applicant took no action up to August 2013 when he filed this application. The applicant in his affidavit does not state what he does as whether he is a pauper. He merely states that due to his financial status he could not raise the legal fees. This reason is not supported by anything and in my view it is not adequate. Further the accident the subject of the intended suit happened on the 25/2/04. It is well over 10 years since then. His first application before Justice Khamoni was filed 6 years later. His application before this court is filed 10 years later. The delay is extremely inordinate and the reasons given are not adequate to warrant the orders the applicant seeks. I therefore decline to grant the orders. The application dated 27/8/2013 is dismissed with no order as to costs.

Orders accordingly.

Dated, signed and delivered this **31<sup>st</sup>** day of **January** 2014

**R. E OUGO**

**JUDGE**

.....**For the Applicant**

.....**Court Clerk**