



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC APPL NO.439 OF 2013**

**JUSTIN MURATHI NJERU**

**MARTH WANGUI MWANGI (being the administrator)**

**Of the estate of NELLY HAZINA).....APPLICANTS**

**VERSUS**

**JOHN NJOROGE MWAURA.....RESPONDENT**

**RULING**

Before me is a Notice of Motion brought under Order 50 Rule 6 of the Civil Procedure Rules and Civil Procedure Rule Cap 21. The applicant Justin Murathi Njeru seeks leave of this Court to file suit out of time and that costs be provided for.

The application is grounded on 5 grounds on the face of the application as follows; that after the death of the applicant's child on the 21<sup>st</sup> February 2010 three years have lapsed; that the applicant sought the services of the advocates on record herein on the 15<sup>th</sup> day of February 2013; that the applicant was not aware that there is a limit to filing his claim; that since the applicant had to obtain the letters of administration ad litem it was not possible to file his claim before the 21<sup>st</sup> February 2013 when 3 years lapsed and that the delay is not inordinate.

The application is supported by the affidavit of Justin Murathi Njeru. He deposes that he is one of the administrators of the estate of Nelly Hazina; that her daughter died on the 21/2/10 as a result of an accident involving vehicle registration No. KAU 291K. That early this year he learnt from a friend of his that it was possible to seek compensation of general and special damages against the respondent and he was referred to counsel on record. That by then he was advised that 3 years had lapsed but he was also advised that he had to apply for letter of administration ad litem. That he did so and the letters of administration ad litem was issued on the 13/3/13. That it is about 2 months then since the 3 years lapsed.

I have considered the facts as deposed and the law. Any action on negligence must be filed within 3 years from the date the action occurred. The provisions of section 4(2) of the Limitation of Actions Act Cap 22 provide that;

***“An action found on tort may not be brought after the end of three years from the date or which the cause of action occurred”.***

The alleged accident is said to have happened on the 21/2/10. The applicant should have filed suit by the 20/2/2013. This application was filed on the 25/4/13 about 2 months after the limitation period had expired. The applicant was issued with Limited grant ad Litem on the 12/3/14. He does not explain why they did not come to Court immediately, however having noted that the delay was for 3 months, though I also note that the application has not been brought by way of Originating Summons under the Limitations of Actions Act, Cap. 22 as procedurally required as procedurally required, I will exercise my discretion and allow the application. I however caution the applicant that the respondent could challenge the leave that has been granted at the hearing of the suit. The applicant shall file suit within 14 days from the date of this ruling. In default the orders shall vacate. Costs shall be in the cause.

Orders accordingly.

**Dated, signed and delivered this 16<sup>th</sup> day of April 2014.**

**R. E OUGO**

**JUDGE**

**In the presence of:**

.....**For the Applicants**

.....**For the Respondent**

.....**Court Clerk**