

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC. APPLICATION NO. 455 OF 2012

IN THE MATTER of an application by *PENINA JOAN GATI*

(suing as the legal representative of JOHN GATI TATIYO (deceased) for extension of time to file suit out of time

AND

In the matter of section 27 and 28 of Limitation of Actions Act (Chapter 22 of the Laws of Kenya)

PENINA JOHN GATI..... APPLICANT

PRELIMINARY RULING

1. This is an application (**originating summons dated 13th August 2012**) for leave to file suit out of time. The application is brought under **sections 27 and 28** of the **Limitation of Actions Act, Cap 22**.
2. The intended suit is for damages on account of personal injuries received by one **JOHN GATI TATIYO** (now deceased) in a road accident on 6th November 2004 along Nairobi-Mombasa highway. The Deceased subsequently died on 6th June 2008, allegedly from the effects of the injuries received in the accident.
3. Whereas the supporting affidavit endeavors to explain why the Deceased did not file suit, the Applicant has not explained at all the delay between when the Deceased died and when she filed this application on 15th August 2012, more than four (4) years.
4. Rather than refuse the application now, I will give the Applicant a chance to offer such explanation by way of a supplementary affidavit. Such supplementary affidavit must be filed within sixty (60) days of delivery of this preliminary ruling. That period is informed by the fact that the Applicant has given her physical and postal address in the supporting affidavit as being in the Republic of Tanzania.
5. The supplementary affidavit must adequately address the requirements of **sections 27(2) and 28(2) of Cap 22** aforesaid.
6. A date for mention shall be taken at the time of delivery of this preliminary ruling. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF JUNE 2013

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF JUNE 2013