



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO. 2 OF 2013
IN THE MATTER OF THE LIMITATION OF ACTIONS ACT
AND
IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME
GEORGE NJIGUA GUNDI.....APPLICANT

RULING

1. By an Originating Summons dated 21st January 2013 the Applicant moved court under order 37 rule 6 of the Civil Procedure Rules for an order that this court do please to extend time within which to file suit against the intended defendant M/S ABERDARE MAIZE MILLING CO. LTD.

2. It is based upon the grounds that the Applicant sustained crippling injuries at his place of work on the 10th November 2007 and has been on treatment ever since and that the time within which to file suit has already expired.

3. It is supported by the affidavit of the Applicant in which he deponed that he had been on treatment since the date of accident until the 17th September 2012 when he was advised by the Doctor that he shall not improve any further and that he could not file suit since he was on treatment and in very poor medical condition.

4. Limitation of Actions Act provides for situations where suits can be brought out of specified period of limitations under section 27 thereof in the following terms.

5. ***27(i) section 4(a) does not afford a defence to an action grounded on tort where***

6. ***a) the action is for damages for negligence nuisance or breach of duty whether the duty exist by virtue of contract or of a written law or independently of a contract or written law and***

7.

8. ***b)the damages claimed by the plaintiff for negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person.***

9.

10. *c)the court has whether before or after the commencement of the action granted leave for the purposes of this section and*

11.

12. *d) the requirement of sub section (2) are fulfilled in relation to the cause of action.*

13.

14. *2. The requirement of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to the cause of action were or included fact of a decisive character which were at all times outside the knowledge actual or constructive) of the plaintiff until a date which*

15. *a. either was after the three years period of limitation prescribed for that cause of action or was earlier than one year before the end of that period and*

16.

17. *b)either case was a date not earlier than one year before the date on which the action was brought.*

18. The only issue for the courts determination is whether the Applicant has put himself within the provision of the law and that is to show that that his failure to proceed in time was due to material fact of a very decisive character being outside his knowledge.

19. Section 30(3) of the Law of Limitation of Action Act provides that for the purposes of section 27 under which the application is brought a fact shall be taken at any particular time to have been outside the knowledge (either or constructive) of a person if

20. *(1) He did not know that fact*

21. *(2)In so far as that fact was capable of being ascertained by him, he had taken all such steps (if any) as it was reasonable for him to have taken that time for the purpose of ascertaining it and*

22. *(3)In so far as there existed and were known to him circumstances from which with appropriate advise that fact might have been ascertained or inferred he had taken such steps (if any) as it was reasonable for him to have taken before that time for the purposes of obtaining appropriate advice with respect to the circumstances.*

23. From the affidavit herein it seems to me that the Applicant was only under physical disability but the fact material to making decision to file suit were well within his knowledge and that poor medical condition does not fall within the material facts under section 27 of the Limitation of Actions Act.

24. I therefore find no merit on the application herein and therefore dismiss with no order as to cost.

25. Dated at Nyeri this 4th day of July 2013.

J. WAKIAGA

JUDGE

Delivered on 19th day of July 2013 in open court in the presence of the applicant and in the absence of his advocate.

J. WAKIAGA

JUDGE