



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**MISC. CIVIL APPL. NO. 159 OF 2012**

**PETER M. MBOGO.....APPLICANT**

**Versus**

**DESTER NAWA**

**DASH HAULERS LTD ..... RESPONDENT**

**RULING**

1. By Originating Summons under order 37 rule 6(1) of the Civil Procedure Rules 2010 and section 27 of the Limitation of Actions Act for an order that the honourable court grant leave to the Applicant to file a suit out of the statutory stipulated time.
2. It is supported by the affidavit of PETER W. MBOGO the Applicant wherein the same deponed that on 12th November 2007 his driver was lawfully driving motor vehicle registration No. KAZ 387M Toyota Matatu along Karatina-Nyeri Road when the 1st Respondent carelessly parked Motor vehicle Registration No. KAU 667Z Lorry Trailer ZC 3999 thereby blocking the road and this caused his motor vehicle to ram onto the said trailer.
3. That after the accident his driver was charged with the offence of careless driving in Karatina Traffic Case No. 1080 of 2007 that when he sought legal advise from his Advocate with intention of pursuing civil proceedings against the respondent he was informed that he should await the outcome of the aforesaid traffic case which was concluded on 27th June 2012. That his driver was acquitted soon after the statutory stipulated period had lapsed.
4. The only issue for the court to decide is whether the Applicant falls within the exception as stipulated under section 27 of the Limitation of Actions Act.
5. In MARY OJUNDWA v NZOIA SUGAR CO. LTD. CIVIL APPEAL NO. 244 OF 2000 the Court of Appeal held

***“Section 27 of the Limitation of Actions Act clearly lays down that in order to extend time for filing a suit the action must be founded on tort and must relate to the tort of negligence nuisance or breach of duty and the damage claimed must be in respect of personal injuries to the plaintiff as a result of the tort.”***

6. It must also be pointed out that the time will not be extended unless the applicant proves that material facts relating to his cause of action were or included facts of a decisive character which were at all material times outside the knowledge of the plaintiff. In order to prove this the applicant is expected to show that he did not know that fact, that 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 for the purposes of ascertaining it and that in so far as there existed and were known to him, circumstances from which with appropriate advise, that fact might have been ascertained the FRANCIS MUGO NDEGWA vs AMBOSELI COURT NAIROBI MISC. CIVIL APPLICATION

NO. 376 OF 2012.

7. From this case the damage sought is not in respect of personal injuries but material damage and the only reason advanced is wrong legal advise.
8. It is therefore clear to my mind that the application must fail as it does not meet the provisions provided for under section 27 of the Limitation of Actions Act.
9. I therefore dismiss the application herein with no order as to cost.

Dated and delivered in court on 19th day of September 2013.

J. WAKIAGA

JUDGE

19/9/2013

Before Hon. Justice J. Wakiaga - Judge

court clerk - Wanjohi

Mr. Mwangi for the applicant.

Court: Ruling is read in open court in the presence of the applicant.

J. WAKIAGA

JUDGE