REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO. 114 OF 2012

1. IRENE WAMBUI MATHENGE

2. TIMOTHY WACHIRA MATHENGe (Representatives of theestate of **Erick Mathenge Wambui**)**…….APPLICANTS**

VERSUS

DAVID OGUTU MICHIRA….....…..…..……..
…….....RESPONDENT

R U L I N G

1. This is an application for leave to file suit out of time under **section 27** of the **Limitation of Actions Act, Cap 22** (the **Act**). The application ought to have been brought by way of originating summons and not by notice of motion (see **Order 37, rule 6** of the **Civil Procedure Rules** (the **Rules**). But this is only a procedural technicality. The main thing is that the Applicant is before the court, and he has clearly stated in his application what he is seeking. So, I entertained the application.

2. The intended suit is for damages on account of personal injuries suffered in a road accident. Those injuries resulted in the death of the person on whose estate's behalf the intended suit is to be filed. The provisions of **section 27(1)** of the Act have thus been met. I am also satisfied from the supporting affidavit that the requirements of **section 28** of the Act have also been met.

3. In the circumstances I will allow the application and grant the leave sought. The intended suit must be filed within 21 days of the date of delivery of this ruling. Costs of this application shall be in that suit. It is

so ordered.

DATED AT NAIROBI THIS 10TH DAY OF MAY 2012.

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 11TH DAY OF MAY 2012.