



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Application 29 of 2011

MARTHA MIYANDAZI..... APPLICANT

VERSUS

KENYATTA UNIVERSITY..... RESPONDENT

RULING

1. This is an application (**notice of motion dated 7th February 2011**) for leave to file suit out of time. The application is stated to be brought under **section 3A** of the **Civil Procedure Act**. That Act saves the court's inherent jurisdiction in the following terms -

“3A. Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

2. The application was served upon the Respondent by order of the court. At the hearing thereof there was no appearance for the Respondent who was aware of the hearing.

3. The cause of action in the intended suit is in defamation. Time to file a suit founded on defamation is limited to twelve months under **section 4** of the **Limitation of Actions Act, Cap 22** which provides –

“4(2). An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve month from such date.”

5. **Section 27** of **Cap 22** makes provision for extension of the limitation period in case of ignorance of material facts in actions for negligence. Needless to say such extension is not available in actions for libel or slander (defamation).

6. The Limitation of Actions Act having prescribed time limitation within which to bring a suit founded on defamation, and the same statute not having donated to the court jurisdiction to extend that limitation period, the court simply does not have jurisdiction to extend the limitation period. The court's inherent

jurisdiction does not include the power to ride rough-shod over express provisions of statute, or to ignore such provisions.

7. The court's power to enlarge time under **Order 50, rule 6** of the **Civil Procedure Rules** (the **Rules**) is applicable only where -

“...time has been fixed for doing any act or taking any proceedings under (the) Rules, or by summary notice or by order of the court ...”

That power cannot be used to extend any period of limitation prescribed by statute.

8. The present application is clearly misconceived and incompetent. It is hereby dismissed with no order as to costs. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF JUNE 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2012