

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Application 276 of 2012

JOSEPHINE WANJIKU MWANGI..... APPLICANT

VERSUS

SALOME WAMBUI KIIRU..... RESPONDENT

R U L I N G

1. Section 27(1) of the **Limitation of Actions Act, Cap 22** (the **Act**) provides as follows-

“27. (1) Section 4(2) does not afford a defence to an action founded on tort where –

- (a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and
- (b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty, consist of or include damages in respect of personal injuries of any person; and
- (c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and
- (d) The requirements of subsection (2) are fulfilled in relation to the cause of action.”

2. In this **originating summons dated 14th May 2012** (which is *ex parte* by law) the Applicant has sought leave of the court as set out above to bring an action against the Respondent outside the limitation period prescribed by section 4(2) of the Act.

3. The intended action is for compensation in the form of damages for property destroyed by the Respondent. The property in question was a house in a plot of land. The Respondent was said to have been arrested and criminally charged with (and convicted of) malicious damage to property.

4. Though the Applicant’s intended action will be founded on tort, and will be for damages for breach of duty, such damages will not consist of or include damages in respect of personal injuries of any person. The damages will be in respect of injury to property.

5. That being the case, leave to file suit out of the limitation period cannot be granted, and I therefore refuse the originating summons with no order as to costs. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF DECEMBER 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2012