



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**MISC. CIVIL APPLICATION NO. 115 OF 2010**

**IN THE MATTER OF THE ESTATE OF NOAH NDWIGA MOSES - (DECEASED)**

**JANE MUTHONI NJIRU.....1<sup>ST</sup> APPLICANT**  
**TITUS NJIRU.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MURITU KINYANJUI.....1<sup>ST</sup> INTERESTED**  
**DEFENDANT**  
**JAMES KARIUKI WANJAU.....2<sup>ND</sup> INTERESTED**  
**DEFENDANT**

**RULING**

1. Jane Muthoni Njiru and Titus Njiru hereinafter referred to as the applicants have come to this court ex-parte under Section 27 and 28 of the Limitation of Actions Act. The applicants are seeking to have time extended for filing a suit for compensation for fatal injuries sustained in a road traffic accident by Noah Ndwiga Moses (hereinafter referred to as the deceased). The applicants were granted letters of administration ad litem on 1<sup>st</sup> February 2010 but claim that they were not able to collect the grant until May 2010. The applicants therefore pray for extension of time.
2. I have given due consideration to this application. Under Section 29(4) of the Limitation of Actions Act, Section 27(1) of the Limitation of Actions Act which provides for extension of time is only applicable where the suit is an action for damages in respect of a deceased person's death, if the action is brought before the end of 12 months from the date on which the deceased died. Thus the claim would be statute barred after 1 year from the date of the deceased's death.
3. In this case the deceased is said to have died on 13<sup>th</sup> March 2007. Therefore going by Section 29 of

Limitation of Actions Act, an application for extension of time could only be entertained if the suit had been filed by 12<sup>th</sup> March 2008. However to date almost 4 years after the death of the deceased no suit has been filed. Nevertheless I do note that Section 29(4) of the Limitation of Actions Act is inconsistent with Section 4(2) of the Limitation Act which provides for causes of action founded on tort to be statute barred after 3 years. In this case, the deceased's cause of action arose on 13<sup>th</sup> March 2007 when he was involved in the road accident and this is the same day the deceased died. Under Section 4(2) the claim being founded on tort, limitation would only set in 3 years later i.e. on 13<sup>th</sup> March 2010. This appears to have been the position taken by the applicants. I have checked Succession Cause No.38 of 2010 and have noted that the applicants applied for letters of administration ad litem on 1<sup>st</sup> February 2010. It would be unfair and unjust to bar the applicants from pursuing the deceased's cause of action after only 12 months from the date the cause of action arose. In the circumstances I find that this is an appropriate case in respect which this court can exercise its inherent jurisdiction so as to meet ends of justice by extending time to the applicants to file the suit out of time. Accordingly I hereby extend time for the applicants to file their suit within 60 days from the date hereof.

Orders accordingly.

**H. M. OKWENGU**

**JUDGE**

Delivered, dated and signed at Embu this 26<sup>th</sup> day of January 2011

**In the presence of:- Mr. Okwaro for Applicant. Njue CC.**