



CIVIL

- ***Leave to file a suit out of time when it has been delayed by an order suspending suits.***

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL CASE NO. 49 OF 2011 (OS)

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE SUIT OUT OF TIME

CHAPARA TARAYA NANGUNYE APPLICANT

JUDGMENT

The appellant has filed this *ex parte* originating summons seeking this court's leave to file a suit against Boniface Muchai Riungu and Auto Selection Kenya Limited out of time. The applicant on 24th July 2007 was a passenger in motor vehicle KAP 574D which was rammed by a matatu vehicle registration number KAW 198P. The matatu was then insured by Invesco Assurance Company Ltd under police number NF/084/1/020957/2006/10. It was driven by Boniface Muchai Riungu and was registered in the name of Auto Selection Kenya Limited. The applicant instructed the firm of J.G. Gitonga & Co. Advocates to make claim for both special and general damages against the driver and the registered owner of the matatu. That firm of advocates by its letter dated 12th September 2009 made the demand to Boniface Riungu copied to Invesco Assurance Company Ltd. The said insurance company however was placed under statutory management. Following that, the statutory manager approached the court whereby the court made an order suspending claims against it. This was on 30th June 2008 when the statutory manager filed HCC Milimani Case No. 318 of 2008 (OS). On that day, the court as stated stayed any action against the insurance company and its insured. On that day the court gave 8 orders but two are relevant in this matter. They are as follows:-

2. That no civil proceedings of whatever nature or from shall be entertained and or filed in any court or tribunal against Invesco Assurance Company Limited (under statutory management) or its policy holders during the currency of the Moratorium declared by the statutory manager on 1/3/2008.

3. That all civil proceedings whatever their nature form and whatever their stage currently subsisting in various courts and tribunals against Invesco Assurance Company Limited (Under Statutory Management) or its policy holders be and are suspended and shall remain suspended during the currency of the Moratorium declared by the statutory manager on 1/3/2008.

As it will be seen, the filing of any suit against Invesco Assurance or its insured were suspended by that order. It is however now in the public domain, and I do take judicial notice of it, that Invesco Assurance is no longer under statutory management. I do therefore find that the orders sought by the applicant are merited. I grant the following orders:-

1. Chapara Taraya Nangunye is granted leave to file a suit against Boniface Muchai Riungu and Auto Selection Kenya Ltd in relation to the accident that occurred on 24th July 2007 involving motor vehicles KAW 198P and KAP 574D out of time and within 21 days from this date hereof.

2. The costs of this case shall abide with the outcome of the main suit that shall be filed as per number 1 above.

Judgment by:-

**MARY KASANGO
JUDGE**

Dated, signed and delivered at Meru this 21st day of July 2011.

**J. LESIIT
JUDGE**