



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**MISCELLANEOUS APPLICATION NO. 179 OF 2011**

**JOSEPH NG'ANG'A MWAURA.....APPLICANT**

**V E R S U S**

**JELEMANO MWANGI GICHUHI.....RESPONDENT**

**R U L I N G**

This is an application under **section 27** of the **Limitation of Actions Act, Cap 21** for leave of the court to file suit out of time. The intended suit is for damages on account of the death of one **Reuben Gichimo Ng'anga, Deceased**. The Deceased died from injuries sustained in a road accident that occurred on 11<sup>th</sup> February, 2008 along **Nairobi –Naivasha Road** at a place called **Rironi**. The present application was filed on 13<sup>th</sup> April, 2011.

Suits founded on tort must be brought within three years from the date on which the cause of action accrued. The cause of action having accrued to the Applicant on 11<sup>th</sup> February, 2008 his suit should have been brought **on or before 10<sup>th</sup> of February, 2011**. As already seen the present application was filed on 13<sup>th</sup> April, 2011. The **delay** here is thus **about two months**.

Section 27 (1) of Cap 22 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.”**

The intended action here is for damages for negligence. Such damages included damages in respect of personal injuries of the Deceased.

Regarding the requirements of sub-section (2) of section 27 aforesaid, I am satisfied that the same have been fulfilled in relation to the cause of action by the explanation for delay given in paragraph 7 of the supporting affidavit. That explanation is that the Applicant was first unable to trace any witnesses to the accident whose statements were necessary to be filed together with the plaint as required by the new **Civil Procedure Rules**.

I will in the event allow the **originating summons dated 12<sup>th</sup> April, 2011**. The leave sought is granted. The Applicant shall file the intended suit **within 21 days** of delivery of this ruling. In default the leave now granted shall lapse.

Costs of the application shall be in the suit to be filed. If no suit is ultimately filed, there will be no order as to costs of the application.

It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY, 2011.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF JULY, 2011.**