

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. CIVIL APPLICATION NO. 211 OF 2010

KENNETH MUGAYA NJUKI APPLICANT

Versus

JOHN MURIRANJA KARIUKIRESPONDENT

RULING

Pursuant to the provisions of section 27 of the Limitation of Actions Act, Kenneth Mugaya Njuki, the applicant herein, took out the originating summons dated 19th August 2010 in which he applied for leave to file a compensatory suit out of time. The applicant swore an affidavit he filed in support of the summons.

The applicant deponed in his affidavit that on 24th December 2006, he boarded motor vehicle registration no. KZQ 055 as a fare paying passenger. The aforesaid motor vehicle is said to be owned by John Muriranja Kariuki, the Respondent herein. It is alleged that the aforesaid motor vehicle was involved in a road traffic accident on the same date along Murang'a - Mugoiri road. The applicant was injured and was taken for treatment at Murang'a District Hospital where he was admitted. After he was discharged the applicant claimed that he continued attending hospital for regular check ups and treatment. The applicant avers that he went to instruct his advocate to file a suit to recover damages for the injuries he sustained. The applicant claimed that he failed to file the compensatory suit within time because it took time for him to heal and to get the particulars of the owner of the motor vehicle which was involved in the accident. For the above reasons he sought for leave to file a suit out of time.

There is no doubt that the applicant was required to file an action within three years from the date of the accident. The accident took place on 24th December 2006. Under s. 27 of the Limitation of Actions Act, the court is given a limited discretion to extent time to file suit out of time. In order for one to gain the court's favour an applicant must prove that the material facts relating to the intended action were of a decisive character which were at all time outside the knowledge of the applicant. It cannot be said that the applicant herein had no knowledge that it was necessary to carry out a search at the registrar of motor vehicles to establish the owner of the motor vehicle which was involved in the accident. The applicant in fact had obtained a police abstract form on 5th September 2008 which indicated that the owner of the motor vehicle was the Respondent herein. By that time the period of three years from the date of the accident had not lapsed. There is no justification why the applicant waited until the year 2010 to file the current summons. In a nutshell, the application does not satisfy the requirements of the provisions of section 27(2) of the Limitation of Actions Act. Consequently the originating summons dated 19th August 2010 lacks merit, it is dismissed with no order as to costs.

Dated and delivered this 15th day of July 2011.

J.K. SERGON
JUDGE

In open court in the presence of Mr. Gacheru for the Applicant.

J.K. SERGON
JUDGE