



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

MISCELLANEOUS CIVIL APPL. NO. 776 OF 2011(O.S)

IN THE MATTER OF: AN APPLICATION FOR THE EXTENSION OF LIMITATION PERIOD

RIOKI ESTATE COMPANY (1970) LIMITED.....PLAINTIFF

- VERSUS -

MICHAEL KINYURU KAMAU.....DEFENDANT

R U L I N G

This is an ex-parte Originating Summons brought under Order 37 Rule 6 of the Civil Procedure Rules; Section 27 of the Limitation of Actions Act and all other enabling provisions of the law.

The Applicant seeks an extension of the limitation period to file a fresh suit at the High Court Commercial Division as per prayers numbers 1 and 2 on the face of the application.

It is supported by grounds also stated on the face of the application. The main thrust of the application is that the Plaintiff had instituted a suit against the Defendant in the subordinate court which suit proceeded to full hearing and submissions but was subsequently struck out as the subordinate court had no jurisdiction to entertain matters falling under the Companies Act, Cap 486 Laws of Kenya

The Plaintiff now wishes to properly institute a suit in the High Court but is time barred and hence the request for extension since the cause of action arose in 2003.

I have heard counsel for the Applicant Miss Wambugu on the application and I have considered the averments contained in the supporting affidavit of Mr. David N. Chuchu dated 19th September 2011 and annexures thereto.

I have looked at the annexed original Plaintiff and Defence and Submissions of Counsel and Ruling of the inferior court. It appears that none of the counsel raised or detected the error or lack of jurisdiction. The court struck out the matter with no orders as to costs, in my view a tacit understating that it apportioned no blame. I also note that at no point had the Plaintiff been indolent and there has been no delay in presenting the present application since August 5th 2011 when the Ruling was made.

Further, interest of justice would be done if extension of time is allowed and the matter is filed in the court with the jurisdiction so that the matter may be tried on merit.

There is no prejudice to be caused to the Defendant.

In the upshot, I allow the application but without costs. Further I direct and order that the orders made in this file be applicable in all the other files viz; H.C. Misc. No.s 775, 777, 778 and 780 all of 2011 as the issues raised in all these matters are the same.

It is so ordered

DATED, READ AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER 2011.

E. K. O. OGOLA
JUDGE

PRESENT:

..... For the Plaintiff
..... For the Defendant
.....Court Clerk