



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. APPL. 299 OF 2010

CAROLINE AKOTH OKELLO (*Suing as the legal representative of the estate of* **MARK OKELLO**)

AROKO

..... APPLICANT

-VERSUS-

HON ATTORNEY GENERAL

(sued on behalf of the Ministry of

PROVINCIAL ADMINISTRATION & INTERNAL SECURITY & THE POLICE COMMISSIONER

..... RESPONDENT

RULING

The application before court was filed by the applicant **Carolyn Akoth Okello** on behalf of the estate of **Mark Okello Aroko**, by way of a notice of motion pursuant to Sections 3A and 95 of the Civil Procedure Act, Order XLIX Rule 5 of the Civil Procedure Rules, Section 27(1)(b) of the Limitations Act. The same seeks for extension of time within which to file suit. The application is based on the affidavit of **Stephen Aluoch K’opot** and on the grounds that; the delay was inadvertent, in that there was a delay by the applicant in obtaining the grant of letters of administration, that no party will be prejudiced and that there was no omission on the part of the applicant.

The application was objected to by the respondent, the Honourable the Attorney General sued on behalf of the Provincial Administration and Internal Security on the grounds that; the applicant has not demonstrated that she was under a disability that would entitle her to the extension sought; the plaintiff did not comply with Section 27(1) (d) & 2 of the Limitation of Actions Act; the application is misconceived, bad in law & fact and an abuse of court process.

My reading of the matter before me is that counsel for the applicant was not diligent in his handling of the matter. One, he filed the initial suit without grant of representation. He applied for the grant and obtained the same on the 12th of June, 2009; and although he knew or ought to have known that at the time of filing suit the cause was time barred he proceeded with the matter. Time for filing suit lapsed on 29th of December, 2008. This application was filed on 5th of November, 2010 almost 2 years after lapse of time, prosecuted on 29th of September, 2011 almost 4 years since cause of action.

A part from failing in demonstrating good cause that would allow the extension under the relevant Sections of the Law in my view the lapse of time is inordinately long. In the circumstance I find the objection merited.

I decline to grant the orders, the application is dismissed. Costs in the cause.

DATED AND DELIVERED THIS 27TH DAY OF OCTOBER, 2011.

ALI-ARONI
JUDGE

In the presence of:

..... present for Appellant

.....present for Respondent