

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Miscellaneous Case 329 of 2008**

**TABITHA NJOKI WARUTEREAPPLICANT
V E R S U S**

**1. SIMON KARIUKI NGUGI
2. PETER NGARUIYA GATHENYARESPONDENTS**

R U L I N G

The Applicant seeks by this *ex parte* originating summons dated 20th May, 2008 leave under section 27 of the Limitations Actions Act, Cap 22 (the Act) to file suit out of time. The intended suit is for recovery of damages arising out of the death of the Applicant's husband in a road accident that occurred on 2nd April, 2001.

Being a claim in the tort of negligence, the suit should have been filed within three years from the date when the cause of action arose. The suit should thus have been filed on or before 1st April, 2004. The delay is therefore over 5 years.

The Applicant says in her supporting affidavit that she acquired the necessary letters of administration *ad litem* to the estate of her deceased husband on 6th May, 2001, but that she was unable to get the police abstract since the matter was still under investigation. She does not state when those investigations ended or when she was able to get the police abstract. In any event, want of a police abstract in an accident should not have prevented the Plaintiff from filing suit as the same could have been obtained during subsistence of the suit.

There is no credible explanation given in the supporting affidavit why the Applicant has waited eight years before deciding to file suit. It would be unjust to burden the intended defendants with a suit whose cause of action arose nearly nine years ago. With the passage of time memory fails, witnesses relocate or die, and document may be lost.

I find that the strict requirements of section 28 of the Act have not been met. Subsection (2) of section 27 of the Act requires that the requirements of section 28 aforesaid be met by the Applicant before leave to file suit out of time can be granted.

In the circumstances I find no merit in this application. It is hereby dismissed with no order as to costs.

DATED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2010

H. P. G. WAWERU

J U D G E

DELIVERED THIS 5TH DAY OF FEBRUARY, 2010