



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**(MILIMANI LAW COURTS)**

**Miscellaneous Civil Application 278 of 2010**

ISAYA WAFULA MASIKA (Suing as the Legal Administrator of the estate of  
LILIAN NAMONO MWIMA..... PLAINTIFF/APPLICANT

V E R S U S

JAPETH KIPROP BORUETT..... DEFENDANT/RESPONDENT

**R U L I N G**

Before me is an Originating Summons dated 26<sup>th</sup> May, 2010 filed by M/s rumba Kinuthia & Company advocates for the applicant. The application was filed under section 27 and 28 of the Limitation of Actions Act (*Cap.22 of the Laws of Kenya*), as well as section 3A of the Civil Procedure Act (*Cap. 21 Laws of Kenya*), as well as section 3A of the Civil Procedure Act (*Cap. 21 Laws of Kenya*).

The prayers in the application are as follows-

1. ***THAT this Honourable Court be pleased to grant the applicant leave to file suit out of time against the respondent.***
2. ***THAT upon such leave being granted the draft plaint annexed be deemed as duly filed upon payment of requisite fees.***
3. ***THAT the costs of this application be in the cause.***

The application has grounds on the face of the Originating Summons. The grounds are as follows-

- (a) ***The claim herein against Japhet Kiproop Boruett is for damages for negligence of the respondent causing the death of Lilia Mamono Mwima.***
- (b) ***That the claim against the respondent expired on 3<sup>rd</sup> August, 2007.***
- (c) ***That the plaintiff/applicant and the wife were deeply depressed after the death of their daughter that they did not file the suit within the stipulated time.***
- (d) ***That the plaintiff/applicant had to apply for grant of Letters of Administration ad Litem to be able to administer the estate of the deceased which grant was received on 14<sup>th</sup> October, 2009, hence the delay.***
- (e) ***That the applicant has a good claim against the respondent herein and the doors of justice should not be shut out on him due to the mishap that occasioned him.***
- (f) ***That the application herein has been made without Inordinate delay.***

The application was filed with a supporting affidavit sworn on 26<sup>th</sup> May, 2010 by the applicant ISAYA WAFULA MASIKA. The annexures to the said affidavit include a copy of a certificate of death of the minor child of the applicant (***the subject***), copy of limited grant of letters of administration, as well as a draft plaint.

On the hearing date, Mr. Asiyu for the applicant addressed the court in support of the application.

I have considered the application and circumstances of the matter. I have also considered the law. Indeed, sections 27 and 28 of the Limitation of Actions Act (**Cap. 22**) provided for the powers of this court to allow parties to file suits out of time after the three year limitation period, where there appears to be a reasonable cause of action. In the circumstances of this case, I am convinced that there is a reasonable cause of action, and since the subject herein is a deceased person and the applicant (**proposed plaintiff**) had to obtain letters of administration first, I will not shout him out of litigation. I will therefore allow the application.

Consequently, and for the above reasons, I allow the application and order as follows-

- 1. Leave be and is hereby granted for the applicant to file suit out of time.**
- 2. The suit will be filed within the next thirty (30 days).**
- 3. Costs in the cause.**

Dated and delivered at Nairobi this 5<sup>th</sup> day of October, 2010.

**George Dulu**  
**Judge.**