

**REPUBLIC OF KENYA
IN THE HIGH COURT**

**AT BUNGOMA
MISC. CCIVIL APPL. NO.64 OF 2009**

AMINA ANYANGO JUMA also known as MAGDALENE LITUNYA.....APPLICANT

~VRS~

**SAMUEL ALOYO OTSULA.....1ST RESPONDENT
JULIA AWINJA OTSULA.....2ND RESPONDENT
IRENE ALOYO.....3RD RESPONDENT**

JUDGMENT

The Applicant Amina Anyango alias Magdalene Litunya in her application dated 18/02/2009 seeks for orders for leave to institute a suit out of time. The facts giving rise to this application are that the Applicant was assaulted by the Respondents on 10/01/2005. She sustained serious injuries as shown in the medical report attached. The Respondents were charged and convicted of the offence in Butere Court. The case was finalized on 02/07/2007. The Applicant filed this application on 24/03/2009.

The grounds supporting the application are that the three (3) year period within which a suit for damages should be filed has expired. The parties have been negotiating compensation the arrangement did not materialize. Further that, the Applicant was undergoing treatment for the serious injuries sustained which took time.

I have looked at the annexures including the charge sheet and the medical records. There is no correspondence attached to show the negotiations for compensation. It will be assumed that the negotiations were not reduced in writing and that parties did not communicate in way of letters. The cause of action arose on 10/01/2005 and the three (3) year period allowed by the law expired on 10/01/2008. This application was filed in court on 24/03/2009 which was about one year after time expired. This period is beyond the twelve (12) months within which extension of time ought to be sought. However, considering that the Applicant is a lay person, she may have waited for compensation for long not knowing that time was running out.

The delay was not therefore deliberate and I allow the application as prayed. The plaint to be filed in the court possessed of jurisdiction within 14 days.

**F. N. MUCHEMI
JUDGE**

Judgment delivered and dated at Bungoma this 30th day of November, 2010 in the presence of Mr. Kakoi for Change for the Applicants.

**F. N. MUCHEMI
JUDGE**