



SAMSON JOHN NDERITUPLAINTIFF

V E R S U S

ATTORNEY GENERALDEFENDANT

R U L I N G

This is an application under section 27 of the Limitation of Actions Act, Cap. 22, for leave to bring suit out of time. The intended suit, against the Attorney-General, is for damages for unlawful arrest, false imprisonment and malicious prosecution. The cause of action arose on or about 11th June, 2003. Suit should therefore have been filed on or about 10th June, 2004. See section 3(1) of the Public Authorities Limitation Act, Cap. 39. The suit is thus about 3½ years out of time.

Under section 27(1)(b) of Cap. 22 aforesaid, the court will extend the limitation period only where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person. One of the issues to be decided in this application is whether “**damages in respect of personal injuries**” include damages for unlawful arrest, false imprisonment and malicious prosecution.

I have considered the submissions of learned counsel appearing. Learned counsel relied on two definitions to be found in “**Black’s Law Dictionary**”, 8th Edition. The first is of the word “**injury**”, one of whose meanings is given as:-

“The violation of another’s legal right, for which the law provides a remedy; a wrong or injustice”.

The second definition is of the term “**personal injury**”. It is defined thus:-

“1. In a negligence action, any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury.

2. Any invasion of a personal right, including mental suffering and false imprisonment.”

Learned counsel buttressed his submission with a passage from “**CLERK & LINDELL ON TORTS**”, 16th Edition. In chapter 19 thereof on malicious prosecution, etc, it is stated in part of paragraph 19-02:-

“Nature of damages thereby caused. An abuse of the right to put the law into motion may of necessity be injurious, as involving damage to character, or it may in any particular case bring about damage to person or property. There are, according to Holt C.J., three sorts of damage to a plaintiff, any one of which is sufficient to support an action of malicious prosecution. “First, damage to his fame if the matter whereof he be accused be scandalous. Secondly, to his person, whereby he is imprisoned. Thirdly, to his property, where he is put to charges and expenses.””

Though I was previously of a different persuasion, I am now satisfied, in light of the definitions of the terms “injury” and “personal injury” to be found in “**Black’s Law Dictionary**”, that “**damages in respect of personal injuries**” include damages for unlawful arrest, false imprisonment and malicious prosecution. But the Applicant must establish the requirements of subsection (2) of section 27 aforesaid. I have read the Applicant’s affidavit sworn in support of the application. He depones in paragraph 8 thereof:-

“8....I did not know that a cause of action (could) be maintained against the government, or that the government (could) be sued at all, and it was only after hearing a program on a local radio station that I came to learn that (this could be done).”

Does this satisfy the requirement that the Applicant do prove that material facts relating to the cause of action were, or included, facts of a decisive character which were at all times outside his knowledge (actual or constructive)? I think the fact whether or not one has a cause of action is one of a decisive character. Given the state of legal awareness, or lack of it, in the general population in our country today, it is not surprising that the Applicant did not know that he had a cause of action against the Government.

I am also satisfied that there is evidence before the court that if the intended action had been brought in time and such evidence adduced, the same would, in the absence of any evidence to the contrary, be sufficient to establish the cause of action, apart from any defence of limitation. Section 28(2) of Cap. 22 is thus also satisfied.

I will in the event allow the application and grant the extension of time sought. The Applicant may file suit within 14 days of delivery of this ruling. Costs of the application shall be in such cause. It is so ordered.

DATED AT NAIROBI THIS 22ND DAY OF JANUARY, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 25TH DAY OF JANUARY, 2008