



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

MISC CIV APPLI 105 OF 2005

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS

OF KENYA

AND

IN THE MATTER OF THE ESTATE OF JUSTUS KAUGI RAGWA

AND

IN THE MATTER OF AN APPLICATION BY HARRIET MUTHONI KAUGI

(The Legal Representative) TO FILE SUIT OUT OF TIME

RULING OF THE COURT

The applicant, Harriet Muthoni Kaugi has brought this ex-parte originating summons under the provisions of Order 36 Rules 3C and 7 of the Civil Procedure Rules (hereinafter referred to as the rules), sections 3A of the Civil Procedure Act (hereinafter referred to as the Act) and sections 27 and 28 of the Limitations of Actions Act, Cap 22 Laws of Kenya (hereinafter referred to as the Limitations Act).

The applicant's main prayer is for an order granting the applicant leave to file suit out of time against the Attorney General of the Republic of Kenya for both special and general damages payable to the estate of Justus Kaugi Ragwa, since declared dead by the court.

The application is premised on four grounds on the face thereof namely that:-

- (a) The said Justus Kaugi Ragwa had been admitted to Mathare Psychiatric Hospital from where he went missing on 29th December 1993 never to be seen again and has now been declared by the court as presumed dead.
- (b) The applicant has sought for and obtained Letters of Administration and now seeks leave as the time limit within which to bring this claim has lapsed.
- (c) The delay in filing the said claim was occasioned by factors beyond the applicant's control and particularly as the government officials continued assuring her of continued efforts to trace the said Julius Kaugi Ragwa.
- (d) This application is made in utmost good faith and the prayers sought if granted will not prejudice the case for the intended defendants if any.

The application is also supported by an affidavit sworn by the applicant on 30.4.2005. The applicant states in the said affidavit that she is the legal representative of the estate of Justus Kaugi Ragwa who was presumed dead by the court on 10.4.2001. She states further that the deceased Justus Kaugi Ragwa disappeared from Mathare Psychiatric Hospital on 29.12.93 as a result of the negligence and/or breach of the statutory duty of care by the intended defendant.

It is also contended by the deponent that after the issue was raised in parliament on 27.6.2002, the government undertook to pay damages but that the said undertaking has not been fulfilled. The applicant annexed copies of the grant of letters of administration issued to her on 27.4.2004 as annexure "HMK1", a Ministry of Health "Missing Person" advertisement carried in the KENYA TIMES newspaper of Wednesday March 2, 1994, as annexure "HMK2". Copies of minutes of various ministerial committees and the Hansard were annexed as "HMK3" and "HMK4" respectively. The applicant has duly served the requisite statutory notice of intention to sue upon the Attorney General on the 30.3.2005.

I have carefully considered the application before me, the grounds and the affidavit in support thereof together with all the annexures thereto. Taking all the circumstances into account, I am satisfied that the application is meritorious. Accordingly, I allow the same and make the following orders:-

ORDERS

1. Application dated 30.4.2005 is allowed in terms of prayer (1) thereof.
2. The applicant granted leave to file suit within twenty one (21) days from the date hereof.
3. In default of (2) above, the leave granted to the applicant shall automatically lapse.

Orders accordingly.

Dated and delivered at Meru this 27th day of October, 2005.

RUTH N. SITATI

JUDGE

27.10.2005