



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**CIVIL SUIT 302 OF 2001(OS)**

**FRANCIS NYOIKE MAIWA .....1ST APPLICANT**

**JOSEPH MUTINDA MULI.....2ND APPLICANT**

**DAVID NGANGA MUGWIMI.....3RD APPLICANT**

**JOHN MURAYA MWANGI.....4TH APPLICANT**

**VERSUS**

**MASTERMIND TOBACCO (K) LTD.....1ST RESPONDENT**

**MICHAEL MULEL KASYOKO.....2ND RESPONDENT**

**RULING**

This is an application for leave to institute a suit for damages arising from a road traffic accident on 23/8/97 outside the limitation period. The failure by the applicants to file suit in time was due to ignorance. In the affidavit sworn by one of the applicants in support of their application he deposed that after the said accident, the driver of the motor vehicle that caused the accident was charged in a traffic case and the applicants were summoned to give evidence in the traffic case. The applicants thought that the case they were attending would lead to their compensation until it dawned on them that a civil suit had to be filed in court and they became aware of that position in August, 2001, it was deposed.

I have considered the application and perused the provisions of Section 27 of the Limitations of Actions Act. In *ORUTA & ANOTHER VS NYAMATO* [1988] K.L.R. 590 the Court of Appeal stated that in cases of Limitation, the judge in chambers is required to form, on the Plaintiff's evidence before him, a prima facie view as to the matters which the Act contemplates will be decided (if leave were granted) only in the action itself and these matters are:- (a) Whether the Plaintiff has a good cause of action; (b) Whether the plaintiff has fulfilled the requirements of Section 27(2) of the Act.

Their Lordships also observed that from a close reading of the Act, it was not the intention of the legislature to allow a claim based on personal injuries on account of negligence and nuisance or breach of duty to be met with a defence of limitation. While I appreciate that the applicants filed the application about one year outside the limitation period, that is on 5/9/2001, their present advocates took almost three years to prosecute an ex parte application. That subsequent delay was not explained at all. It is, however, undesirable to deny the applicants a chance to pursue their claims simply because of their advocates indolence.

I therefore grant the application and order the intended suit be filed with next 14 days from the date hereof failing which these orders will lapse and will be of no effect thereafter. The applicants shall bear their own costs for this application.

DATED, SIGNED & DELIVERED at Nakuru this 13th day of October, 2004.

**DANIEL MUSINGA**

**AG. JUDGE**

**13/10/2004**