

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Civil Appeal 3 of 2004

MOHAMMED W. WASICHEPLAINTIFF

VERSUS

JENIPHER A. ODOCK.....DEFENDANT

RULING

In essence, the Applicant, Mohammed W. Wasiche, is seeking an order for extension of limitation period so as to be able to institute suit to seek compensation. He was involved in an accident on 2.11.99 along Kisumu/Kakamega road while travelling as a passenger in motor vehicle reg. No. KAH 418 J which was registered in the name of the Respondent, Jenipher Atieno Odock, as the owner thereof. He avers that he discovered or found out the identity of the owner of the said motor vehicle about 4 years after the accident that is to say on 15.10.2003.

The Applicant avers in his affidavit sworn on 28.12.2003 in support of the application that he gave instructions to his advocates on 1.12.2000. The police abstract seems to have been completed on 11.12.2000. Although it did not have the particulars of the owner. The particulars of the driver of the vehicle were filled in it. An application seems to have been made to the Registrar of Motor vehicles on 27.9.2001 with a view to establish the particulars of the owner of the motor vehicle. It was not until two years later after that application was made that a reminder was sent on 5.10.2003. There is no explanation why for two years no reminder was sent or other step taken. Even after the particulars were sent regarding the owner of the vehicle, it took more than 2 months to make an application for extension of time.

I am satisfied that the requirements of section 28(2) of the Limitation of Actions Act Cap 22 have been complied with. The applicant and his counsel went into a slumber. No due diligence was exercised in this case and the application must fail. It is dismissed.

Dated at Kakamega this 3rd day of December 2004.

G.B.M. KARIUKI

J U D G E

3.12.2004

before G.B.M. Kariuki, J

Mudoto court clerk

Mr. Namatsi for the applicant

Ruling read in open court on 3.12.2004.

G.B.M. KARIUKI

JUDGE

3.12.2004