

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 621 OF 2001

BEN KAMARAPLAINTIFF

VERSUS

THE HON. THE ATTORNEY GENERALDEFENDANT

R U L I N G

The Plaintiff applies for me to review my judgment of the 27/11/2002 on the ground that I failed to take into account that by my Order of the 19/6/2002 I allowed the application of the Plaintiff of the 25/3/2002 extending the time for filing of the plaint out of time, but subject to further argument at the hearing. When the matter came for hearing counsel for the AG did not appear and as such no objection was taken to my order extending time.

In the case of *Mary Wambui Kabugu V Kenya Bus Service Ltd. C.A. No. 195 of 1995*. Mr. Justice of Appeal Shah at page 7 of his judgment when dealing with the criteria to be addressed when a trial Judge has to decide whether leave to file a suit out of time was properly granted or not, said

His jobs would primarily be to decide if the leave was factually and legally properly obtained. There may be cases where medical evidence may be misleading enough to enable one judge to grant such leave but when correct medical data may be brought forward by the defendant, the picture may drastically change. There may be clear cases where the applicant may swear to facts which are not true, which can only be challenged at the trial. There may even be cases where a judge, because of the work -load in the superior court, may not have time to apply his mind to the strict requirements of the Act which of course limits the granting of such leave in respect of personal injury, Fatal Accidents Act, and the Law Reform Act claims only. Often the interpretation of Section 27, 28 and 29 of the Act, as explained in Section 30 of the Act may not have been brought to the attention of the judge.

What is the position here where the question of extension of time was not raised by the AG. In my view if the AG wished to challenge the correctness of my order of the 19/5/2002 the AG should have attended to argue the matter. In the absence of any challenge to my order, my order stands and I do not consider that I can suo moto enquire into the correctness of my order.

It appears therefore that I wrongly overlooked the order of the 19/5/2002 and I therefore review my judgment.

I hold that in the absence of any explanation by the defendant as to the lawfulness of the shooting of the plaintiff the defendant was negligent by shooting the plaintiff and find the defendant liable for such shooting.

The plaintiff suffered from multiple punctures Of the stomach Mr. Munene thoracic surgeon gave evidence of an emergency operation he undertook on the plaintiff. After a year from the operation the plaintiff was not yet well.

There is no doubt the shooting caused the plaintiff severe injuries. I award by way of exemplary damages Kshs.50,000/= and by way of general damages Shs.150,000/=.

The plaintiff proved special damages of Shs.543,931/= and I also allow this sum.

The plaintiff will have the costs of the suit and interest on the specials at court rates from the date of the filing of the suit and on the general damages from the date of this judgment.

Delivered on this 16th day of January, 2003 at Nairobi.

P.J. RANSLEY

JUDGE