



RO (Minor suing through his mother and next friend Melisah Maureen Razoah) v National Police Service Commission (Miscellaneous Application (OS) E709 of 2024) [2025] KEHC 2103 (KLR) (Civ) (6 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2103 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION (OS) E709 OF 2024

JN MULWA, J

FEBRUARY 6, 2025

BETWEEN

**RO (MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND
MELISAH MAUREEN RAZOAH) APPLICANT**

AND

NATIONAL POLICE SERVICE COMMISSION RESPONDENT

RULING

1. The Ex-parte Application before the court is brought under Order 37 Rules 6(1) of the *Civil Procedure Rules 2010* and Sections 27 and 28 of the *Limitation of Actions Act*, chapter 22 Laws of Kenya. It is dated 16th July 2024 and supported by an Affidavit sworn by the Applicant on an even date. The Applicant seeks leave to file suit out of time against the Defendant seeking damages for personal injuries that left the minor paraplegic arising from a traffic road accident that occurred on 14/10/2015 off Umoja Estate, Nairobi County.
2. The Application is grounded upon very many grounds, but suffice to state the following:
 - i. That on 14th October 2015, when the minor victim was about three-and-a-half years old, a Motor Vehicle Registration Number GKB 818E, owned by the Defendant and under the control of a Police Officer named Douglas Munyiri, from the Diplomatic Police Unit ran him over as he was crossing a murram road off Moi Drive in Umoja Estate, within Nairobi City County.
 - ii. That the minor sustained grievous injuries, including a spinal injury which resulted in the loss of his lower limbs function, and is now a paraplegic confined to a wheelchair.



- iii. That the Applicant has filed the instant Originating Summons to seek an extension of time the statutory period of three years having lapsed on 14/10/2018.
 - iv. That the minor was treated in several hospitals and discharged from Kenyatta National Hospital on 19th November 2015 with instructions on follow up orthopedics to help reanimate the nerves in his lower limbs, and later through public fund raisers, in hospitals in India.
 - v. That after discharge on 19th November 2015 the Appellant's Father, Elvis Ochieng Benson, taking with him the Discharge Summary from Kenyatta National Hospital, went to the Government Vehicle Accident Inspection Services (GVAIS) – Nairobi Area Police Station to apply for a P3 Form and a Police Abstract Report which they hoped to use as evidence in support of a civil claim for the child's Injury. The occurrence of the accident itself had been reported much earlier at Buruburu Police Station, Nairobi.
 - vi. That the Investigating Officer in the case one PC Rono kept on postponing the meeting with the Police Doctor for purposes of having the P3 Form prepared, and it was only issued on 9th December, 2015 but the said officer refused to issue the Police Abstract Report to the Applicant stating that he could not issue the Police Abstract Report without having first received a recommendation from the Office of the Director of Public Prosecutions to prosecute the Police Officer who was driving Motor Vehicle Registration Number GKB 818E when it ran over the Child.
 - vii. That in between numerous hospital visitations, full time care of the minor by the Applicant, broken marriage with father of the child due to the child's health condition and fund raising money for treatment and non cooperation from the Police, and after the statutory limitation period for filing the case, the police abstract was eventually issued to the Applicant in November 2020, and the Police driver, Douglas Munyiri charged in court with a traffic offense in Milimani Traffic case No. E3902 of 2021 under Section 49 (1) of the *Traffic Act* for the Offense of Careless Driving wherein he pleaded guilty and was sentenced to pay a fine of Kshs. 10,000.
 - viii. That after the Police Abstract Report was issued and the Applicant became aware that Douglas Munyiri was up for prosecution she also became aware that she could pursue compensation for the child because it appeared that the wheels of justice had been stalled for so long and had then started moving. Even so, between 2020 and 2022, the applicant was taken up in raising funds for the further treatment trip to India, meeting well - wishers and obtaining and organizing the documents necessary for the journey and could not muster the resources required to file a court case.
 - ix. That in the process, the Applicant did not let the limitation period lapse intentionally or out of indolence, as she averred that she faced resistance, intimidation and numerous machinations from the Police who clearly did not want this matter followed up and therefore delayed in approaching the court.
3. Upon consideration of the totality of the many reasons and frustrations the applicant has deponed to at length, and upon consideration of the documentary evidence annexed to the supporting affidavits, the numerous medical reports, the huge medical bills and the status of the minor, now a paraplegic on a wheelchair, the only issue for the court's consideration and determination is whether the Application is merited.
 4. Order 37 Rule 6 of the *Civil Procedure Rules* provides-



1. An application under section 27 of the *Limitation of Actions Act* made before filing a suit shall be made ex-parte by originating summons supported by affidavit.

2. Any such application made after the filing of a suit shall be made ex- parte in that suit.

The *Limitation of Actions Act*, (Cap 22) provides for extension of limitation period in the following terms: -

Section 27. Extension of limitation period in case of ignorance of material facts in actions for negligence, etc.

1. Section 4(2) does not afford a defense to an action founded on tort where-

- a. the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and
- b. 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; and
- c. the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and
- d. the requirements of subsection (2) are fulfilled in relation to the cause of action.

2. The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which-

- a. either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and
- b. in either case, was a date not earlier than one year before the date on which the action was brought.

5. The principles governing an ex-parte application in respect of leave to file a suit out of time were enunciated in the Supreme Court case of *County Executive of Kisumu v County Government of Kisumu and 5 Others* (2017) eKLR (Civil Application No. 3 of 2016] as follows-

- a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time is a consideration to be made on a case by case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- f. Whether the application has been brought without undue delay; and



- g. Whether in certain cases, like the election petitions, public interest should be a consideration for extending time.
6. In the present case, the cause of action arose on 14th October 2015. The Applicant has in great detail outlined reasons for the delay to file the suit. In considering whether the court may grant this Application, the requirements under Section 27 of the *Limitations Act* must be fulfilled. See *Mwangi Kanyingi v Francis Kariuki Kanyingi & Another* (2008) eKLR. Further, it is clear that the grant of extension of time is at the discretion of the Court.
7. The Applicant has averred that she did not let the limitation period lapse intentionally or out of indolence, but due to the reasons she has deponed to.

In the case of *Royal Media Services Ltd v Valentine Mugure Maina & Another* (2019) eKLR, Ngaah J. explained the application of Section 4(2) of the *Limitation of Actions Act* as follows: -

“ Before I conclude, I must mention that section 4(2) is couched in such terms that the trial court is left with discretion to extend the time within which a claimant can file suit for damages in defamation claims. It may be that the claimant was under disability of some sort and therefore he could not, for that reason, file the claim within the statutory period. Where the court is inclined to extend time, it must have regard to all the circumstances of the case and in particular to such circumstances as the length and the reasons for, the delay on the plaintiff... the court, in making its discretion will consider the date on which any such facts did become known to him and the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action.”

8. It is evident from the supporting affidavit and annexures thereto that the Applicant sustained grievous injuries, including a spinal injury which resulted in the loss of lower limb function. He is now a paraplegic confined to a wheelchair. The frustrations that the applicant went through at the hands of the police , its failure to issue a police abstract without which a suit could not be filed, and further failure to charge the police officer who was the driver of the accident vehicle for a period of five years, all point to a calculated move to deny the Applicant a chance to bring her case to court for compensation within the three years limitation period for a suit based on the tort of negligence.
9. For the foregoing very stressful events that the Applicant underwent under the intended officers of the Defendant, the court is persuaded that the application meets the threshold and requirements for extension of time to file suit out of time as stipulated at Order 37 of the *Civil Procedure Rules* and Sections 27 and 28 of the *Limitations of Actions Act*.
10. The application dated 16/7/2024 is allowed.
- The intended suit shall be filed within 21 days of this ruling.

DELIVERED SIGNED AND DATED AT NAIROBI THIS 6TH FEBRUARY 2025.

JANET MULWA

JUDGE

