



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISCELLANEOUS APPLICATION NO 57 OF 2020

CATHERINE MUTHONI KINYUA JANE (Suing as Attorney of JANE WATIRI MWERI and

STELLA NGONYO RUOROAPPLICANT

VERSUS

KIMURI HOUSING CO. LTD.....1ST RESPONDENT

MARGARET W NGUGI.....2ND RESPONDENT

RULING

1. The ex-parte applicant initiated this miscellaneous application through a notice of motion dated 1/7/2020. She sought leave of the court to file a suit out of time. She contended that she instructed her advocate to file suit on her behalf and the advocate prepared pleadings but the Government issued Covid-19 related movement restrictions which affected her movements hence she was not able to file the intended suit.

2. The applicant's advocate, Mr. Michael Kamau Kinga, swore a supporting affidavit dated 1/7/2020 in which he deposed that he lived at Donyo Sabuk in Machakos County. Following the announcement of Covid-19 related restrictions, he was not able to travel to Nairobi. He added that because he was the only signatory to the bank account, the requisite court fees could not be obtained from the Bank to facilitate the filing of the intended suit. Upon obtaining a travelling card from the Law Society, he was able to travel to Nairobi, whereupon he reported to his office on 22/6/2020.

3. The application was canvassed through brief written submissions dated 18/2/2021. Counsel for the applicant reiterated the grounds set out on the face of the application and in the supporting affidavit. He added that this court had jurisdiction to extend the limitation period relating to a suit for specific performance and or for compensation in the sum of Kshs16,000,000 and special damages of Kshs120,000. Relying on the decision of **Alphose Yankulije vs One Twiga Road Limited & 2 Others [2019] eKLR**, counsel urged the court to grant the plea.

4. I have considered the ex parte application together with the applicants' submissions. I have also considered the relevant legal framework and jurisprudence. The single issue falling for determination in this application is whether the applicant has satisfied the criteria upon which our courts exercise the discretionary jurisdiction to extend limitation period within which to institute a suit.

5. The principles which guide our courts when exercising the jurisdiction to extend time were outlined by the Supreme Court of Kenya in **Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** in the following words:

1. ***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;***
2. ***A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court***
3. ***Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;***
4. ***Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;***
5. ***Whether there will be any prejudice suffered by the respondents if the extension is granted;***
6. ***Whether the application has been brought without undue delay; and***
7. ***Whether in certain cases, like election petitions, public interest should be a consideration for extending time.***

6. In the present application, the applicant has not exhibited a copy of the draft plaint to disclose to the court the nature of the cause of action in respect of which she seeks an order of extension of limitation period. Secondly, she has not disclosed to the court the applicable limitation statute and the sections which grants this court jurisdiction to extend limitation period. Without disclosure of the relevant cause of action and without a clear demonstration that this court has jurisdiction to extend the relevant limitation period, the court has no proper basis upon which to exercise the discretionary jurisdiction to extend limitation period as invited by the applicant.

7. The net result is that the applicant has failed to satisfy the criteria upon which our courts exercise the discretionary jurisdiction to extend limitation period for filing suit. In the premises, the notice of motion dated 1/7/2020 is dismissed for lack of merit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF JULY 2021.

B M EBOSO

JUDGE