



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 453 OF 2019**

**SHADRACK MURIITHI.....APPELLANT**

**VERSUS**

**MORIS NDIRANGU.....1<sup>ST</sup> RESPONDENT**

**SAMUEL KARANJA.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This is a ruling on application dated 19<sup>th</sup> August 2019. It seeks the following orders: -

**1) Spent.**

**2) To enlarge and or extend time for the applicant to institute compensatory claim against the respondents.**

**3) Costs of this application to be provided for.**

2. Grounds on the face of the application are that the 1<sup>st</sup> and 2<sup>nd</sup> respondents attacked the applicant on 13<sup>th</sup> November 2014 at Railway Area within Nakuru causing grievous harm to the applicant.

3. That as a result of the attack, the applicant reported at Central Police Station where charges were opened against the 1<sup>st</sup> and 2<sup>nd</sup> respondents and investigations carried out against them; and were charged in Nakuru **Criminal Case No.1398 of 2015**; that the said case was heard and concluded on 23<sup>rd</sup> January 2018 where the 1<sup>st</sup> and 2<sup>nd</sup> respondent were found guilty and fined kshs 55,000 in default one-year imprisonment.

4. That as a result of the serious injuries, the applicant who was KDF officer was relieved from his duties; that the matter took long to clear and as a result the three years have lapsed since the incident; that the applicant had to wait for the criminal case to be concluded before filing claim for compensation and therefore prays for extension of time to institute compensation claim against the respondents.

5. The application is supported by affidavit sworn by the applicant on 5<sup>th</sup> August 2019. He restated grounds in support of the application and attached the charge sheet and proceedings of the criminal case. He also attached medical document from Defence Forces Memorial.

6. In response the Attorney General filed grounds of opposition dated 10<sup>th</sup> September 2019. The ground raised is that the applicant has not established any reason why he had to wait for Criminal Case No.1398 of 2015 to be concluded before instituting suit to claim damages; that **Section 193 of the Criminal Procedure Code** provide for both criminal and civil proceedings to proceed simultaneously even if the subject matter in both is substantially related.

7. That the suit if filed will offend **Section 3 (1) of the Public Authorities Limitation Act**; that there was absolutely nothing stopping the applicant from instituting suit within the requisite time.

8. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed replying affidavit jointly sworn on 23<sup>rd</sup> December 2019. They averred that the explanation for delay to the effect that the criminal case took 4 years and proceedings took long is not true. They averred that judgment was delivered on 23<sup>rd</sup> January 2018 and the applicant took another one year to file this application and it is misleading for the applicant to say that the delay was beyond his

control.

9. They aver that the applicant was aware of the material facts concerning injuries on 13<sup>th</sup> November 2014 and delay in instituting suit is abuse of court process and inexcusable; that the applicant is misleading court in saying he is eager to institute compensatory claim yet he has not explained delay; that it is clear the applicant has slept on his rights and want to approach the court of equity with unclean hands.

**APPLICANT’S SUBMISSIONS**

10. In submissions dated 6<sup>th</sup> January 2021, the applicant restated grounds in support of application and averments in the supporting affidavit. Applicant quoted the provisions of **order 50 rule 6** which gives court power to enlarge time as the justice of the case may require.

11. The applicant further cited the case of **Catherine Mwende Vs Elijah Mulyimi & Another [2017] eKLR** where the court extended that on ground that he was prevented from filing suit by reasons beyond his control the applicant submitted that he was prevented by mental and physical incapacities from filing suit.

**ANALYSIS AND DETERMINATION**

12. **Section 4 of Limitation of Actions Act CAP 22** provide as follows: -

**“(2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: provided that an action for libel or slander may not be brought after the end of twelve months from such date.”**

13. **Section 22 of Limitation of Actions Act** provide for extension of limitation period in case of disability if, on the date when a right of action accrues for which a period of limitation is prescribed by this Act, the person to whom it accrues is under a disability, the action may be brought at any time before the end of six years from the date when the action occurred.

14. From the foregoing there is no doubt that a civil claim for injuries should be filed within 3 years from the date of occurrence of the incident.

15. Record show that the alleged assault on the applicant occurred on 13<sup>th</sup> November 2014. He filed this application on 19<sup>th</sup> August 2019 a period of about 5 years after the alleged assault.

16. Reason given by the applicant is that, the criminal case took long before it was determined and that he was waiting for conclusion of the criminal case before filing application for compensation for injuries inflicted.

17. Record show that the criminal case before the subordinate court was concluded on 23<sup>rd</sup> January 2019. The question that arise is, if the applicant was waiting for the criminal case to be concluded, why did he wait for another 7 months to file this application?

18. There is no doubt that a civil claim for injuries can be filed while a criminal suit is pending. The applicant has not demonstrated that he was suffering from any incapacitation which prevented him from filing civil suit for damages resulting from injuries. He only talked of psychological and physical incapacitation without producing any document to prove that there was presence of any factor that incapacitated him to the extent that he was unable to institute suit to claim damages for injuries.

19. In my view filing this application after about 5 years is an afterthought and is inexcusable. I see no merit in the application.

**20. FINAL ORDERS**

**1) Application dated 19<sup>th</sup> August 2019 is hereby dismissed.**

**2) Costs to the respondents.**

Ruling dated, signed and delivered via zoom at Nakuru

This 3<sup>rd</sup> day of June, 2021

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**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Schola- Court Assistant

Mr. Ndichu Counsel for Applicant

Mr. Muchela holding brief for Muremi for 1<sup>st</sup> and 2<sup>nd</sup> Respondents