



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL DIVISION

HIGH COURT MISC. APPL. NO. 540 OF 2016

JUSTIN WILLIAM CHEMOSITT.....1<sup>ST</sup> APPLICANT

LEAH WAITHIRA KARIRU.....2<sup>ND</sup> APPLICANT

(Suing as administrators of the estate of Ruth Wambui Kariru)

VERSUS

ANNE WANGECHI MUGO.....1<sup>ST</sup> RESPONDENT

PETER NGUGI.....2<sup>ND</sup> RESPONDENT

RULING

1. The application dated 12<sup>th</sup> October, 2016 seeks orders that leave be granted to the Applicants Justin William Chemositt & Leah Waithira Kariru (suing as Administrators of the Estate of Ruth Wambui Kariru (deceased) to file suit against Anne Wangechi Mugo & Peter Ngugi out of time after the limitation period.

2. The application is based on the grounds stated on the face of the application and is supported by the affidavit of the Applicant, Justin William Chemositt. It is stated that the Applicants believed that it was a mandatory requirement to obtain the Letters of Administration to the estate of the deceased before they could institute suit, hence the delay in filing suit against the Respondents. That the certificate of confirmation of grant was issued on 25<sup>th</sup> April, 2016. It is contended that the delay in filing suit is not inordinate and should not stand in the way of the beneficiaries of the deceased who wish to seek compensation from the Respondents. It is claimed that the deceased died on 10<sup>th</sup> October, 2012 due to injuries sustained in a road traffic accident involving motor vehicle KBQ 752C and KBS 502J. The accident is blamed on the negligence attributed to the drivers, agents or servants of the Respondents. It is further stated that the Applicants have a legitimate case with reasonable chances of success.

3. In his submissions, the Applicants counsel relied on the following authority; **Dr. Lucas Ndungu Munyua v Royal Media Services Ltd & another 2014 eKLR**. I have considered the said submissions and the authorities cited.

4. Section 4 of the limitation of Actions Act cap 22 Laws of Kenya provides for actions founded on tort to be brought to court within a period of three years. As stated in the case of **Rawal vs Rawal (1990) KLR 275**:

**“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a defendant after he had lost evidence for his defence from being disturbed after along lapse of time. It is not to extinguish claims.”**

5. In the application at hand, the Applicants have brought themselves within the ambit of the provisions of

Section 27, 28 and 29 of the Limitations of Action Act as read with Section 30 thereof where the court can give leave on account of the Applicants ignorance of material facts relating to the cause of action which were of a decisive character. (See for example **Lucia Wambui Ngugi v Kenya Railways & another Nbi. HCCA 213 of 1989**)

6. Although the delay in filing suit is blamed on the obtaining of the certificate of confirmation of grant, it is noted that the succession cause was filed in the year 2014. That is Succession Cause No. 478 of 2004. The accident the subject matter herein occurred on 10<sup>th</sup> November, 2012. The delay to filing the application under consideration is for a period of almost one year. The delay is not inordinate taking into account that the case involves minors who are reflected as some of the beneficiaries. The Applicants ignorance is vindicated by the fact that they took steps to instruct a counsel and obtained the certificate of confirmation of grant.

7. *Prima facie*, I am satisfied that the requirements of the Limitation of Actions Act have been met. Consequently, I allow the application with costs in cause.

Dated, signed and delivered at Nairobi this 9<sup>th</sup> day of Feb., 2017

**B.THURANIRA JADEN**

**JUDGE**