



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL SUIT NO. 614 OF 2016 (O.S)

IN THE MATTER OF AN APPLICATION FOR EXTENSION OF LIMITATION PERIOD FOR FILING SUIT

CATHERINE MWENDEPLAINTIFF/APPLICANT

VERSUS

1. ELIJAH MULYINGI MUSYIMI1ST DEFENDANT/RESPONDENT

2. BENJO (K) LIMITED..... 2ND DEFENDANTS/RESPONDENT

RULING

The Plaintiff/Applicant herein has moved the court by way of an Originating Summons dated 6th December, 2016 and filed in court on the 7th December, 2016 seeking leave to file suit against the Respondents out of time. It is brought under Section 27 of the Limitation of Actions Act and order 37 Rule 6(1) of the Civil Procedure Rules.

It is supported by the affidavit of Catherine Mwende sworn on 6th December, 2016. She depones that on or about the 7th May, 2012 she was involved in a traffic accident along Race Course Road, with Motor vehicle registration number KAV 548M belonging to the 2nd defendant and driven by the first defendant.

She avers that the accident was caused solely by the negligence of the first defendant as he veered off the road and knocked her down while she was lawfully walking on the pavement. As a result of the said accident, she sustained severe degloving injuries on her lower limbs for which she was admitted at Kenyatta National Hospital for 4 months. Thereafter, she was bedridden and had been attending outpatient clinic until May, 2016 when she began to walk albeit with difficulty. She has sought the leave of the court to file suit out of time.

The court has considered the application, together with the Supporting Affidavit and the annexures. The submissions by the counsel for the Plaintiff/Applicant have also been taken into account.

The application has been brought under Section 27 of the limitation of Actions Act. The Court of Appeal in the case of **Mary Osundwa Vs Nzoia Sugar Company Limited (Civil Appeal NO. 244 of 2002)** had this to say about Section 27.

“Section 27(1) of the Limitation of Actions Act clearly lays down that in order to extend time of filing a suit, the action must be founded on tort and must relate to the tort of negligence, nuisance or breach of duty and the damages claimed must be in respect of personal injuries to the plaintiff as a result of the tort.”

Still on Section 27 the Court of Appeal in **Willis Onditi Odhiambo Vs Gateway Insurance Co. Ltd Civil Appeal No. 37/2013** it was held:-

“Under Section 27 as can be gleaned from the provisions cited above, time to file suit can only be extended where the action is founded on tort and must relate to the tort of negligence, nuisance or breach of duty and damages claimed should be in respect of personal injuries to the plaintiff as a result of the tort.”

The power to extend time is discretionary and not fettered at all, save that it should be exercised judiciously and upon defined principles of law.

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

The above decision cited the case of **Dhanesvar v Mehta V Manilal M. Shah (1965) EA 321** were the court stated:-

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand and on the other hand to protect a defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

It is clear that the cause of action herein is a tort being a road traffic accident that occurred on the 7th May, 2012 in which the Plaintiff sustained personal injuries. Such suit is supposed to be filed within 3 (three) years from the date of the accident which was not done in this case and hence the application to extend time. A quick perusal of the P3 form reveals that the plaintiff sustained serious injuries which incapacitated her and prevented her from filing the suit on time.

In paragraph 5 of the supporting affidavit, she depones that she had been bed ridden and attending clinic until the month of May, 2016 when she began to walk albeit with difficulty and in the circumstances she was caught up by the limitation period. The plaintiff has annexed medical documents to that effect.

Having considered the application and the material availed to this court, I find that the plaintiff was prevented from filing the suit by circumstances that were beyond her control and which are excusable in the circumstances.

In the end, I find and hold that the application dated 6th December, 2016 has merits and it is granted as prayed. The Plaintiff to be filed within 14 days from the date of this ruling.

Dated, signed and delivered at Nairobi this 9th day of March, 2017.

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L. NJUGUNA

JUDGE

In the presence of:-

..... *For the plaintiff*

.....*for the defendant*