



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC. APPL. NO. 436 OF 2015**

**IN THE MATTER OF LIMITATION OF ACTION ACTS CAP 22 AND**

**THE PUBLIC AUTHORITIES LIMITATION ACT LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE APPLICATION OF LEAVE TO FILE SUIT OUT OF TIME**

**PETER MBUGUA.....1<sup>ST</sup> EXPARTE APPLICANT**

**EVANSON NG'ANG'A MBUGUA.....2<sup>ND</sup> EXPARTE APPLICANT**

**RULING**

1. The application (amended) dated 25<sup>th</sup> August, 2016 is expressed to be brought under section 3 and 6 Public Authorities Limitation Act as read together with Section 28 read together with Part III Limitation of Actions Act, Order 37 Procedure Rules 2010 and all other enabling Provisions of the law. The application seeks orders that leave be granted to file suit out of time.

2. The application is supported by the affidavit of Peter Mbugua Mbogo, the 1<sup>st</sup> Applicant. It is stated that the Applicants were charged with the offence of Murder. They were acquitted on 20<sup>th</sup> May, 2013. The delay in filing suit is blamed on the lack of funds to pay for the deposit for the typing of the proceedings. It is further deponed that the 1<sup>st</sup> Applicant suffered poor health and loss of livelihood due to the incarceration. That the 1<sup>st</sup> Applicant's electronics shop was vandalized while he was in prison. That it was not until 16<sup>th</sup> March, 2015 that the court proceedings were obtained. By that time the limitation period of one year had lapsed. It is averred that the intended suit has triable issues.

3. Section 3(1) of the Public Authorities Limitation Act (Cap 39 Law of Kenya) provides as follows:

**“No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.”**

4. As stated by Bosire, J (as he then was) 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 a long lapse of time. It is not to extinguish claims.”**

5. Turning back to the case at hand, the Applicants have stated that they were acquitted on 20<sup>th</sup> May, 2013. The Applicants therefore ought to have filed suit on 19<sup>th</sup> May, 2014 at the latest. The application at hand was filed on 1<sup>st</sup> October, 2015. This is a delay of over sixteen (16) months. The delay can be deemed inordinate. The Applicants have exhibited documents which include a letter dated 26<sup>th</sup> June, 2013 requesting for certified proceedings and a receipt dated 25<sup>th</sup> July, 2014 for Kshs.10,000/= deposit for the typing of the proceedings. Medical documents have also been exhibited. Thus the lack of finances and poor health are blamed for the delay in obtaining the court proceedings and filing suit within time.

6. Under Section 27 (2) of the Limitation of Actions Act Cap 22 Laws of Kenya, the court has to be satisfied of the Applicant's ignorance of material facts relating to a cause of action. The said provision states:-

**“ 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 .”**

7. Section 30(2) of the Limitation of Actions Act Cap 22 Laws of Kenya sets out what the facts of decisive character are. The said provision stipulates:

**“For the purposes of sections 27,28 and 29 of this Act any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice with respect to them, would have regarded at that time as determining, in relation to the cause of action, that (apart from section 4(2) of this Act) an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.”**

8. The Applicant instructed an advocate who applied for the proceedings. Without the said proceedings, the Applicants can be said to have been ignorant of material facts of a decisive character. However, if the application was based on medical grounds only, Section 22 of the Limitations Act Cap 22 Laws of Kenya would have come into play.

9. Based on the material presented before this court, the Applicants have an arguable case. The upshot is that the application is allowed. The Applicants to meet the costs of the application.

Dated, signed and delivered at Nairobi this 15<sup>th</sup> day of March, 2017

**B.THURANIRA JADEN**

**JUDGE**