

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC APPL. NO. 401 OF 2016

MICHAEL MACHARIA WAITHEREROPLAINTIFF

- V E R S U S -

THE INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE....1ST DEFENDANT

HON. THE ATTORNEY GENERAL.....2ND DEFENDANT

NAOMI NJOROGE 3RD DEFENDANT

P.C.E.A JITEGEMEA CREDIT SACCO4TH DEFENDANT

RULING

1. Michael Macharia Waitherero, the plaintiff/applicant herein, took out the amended Originating Summons dated 14th November 2016 in which he sought for leave to file a compensatory suit out of time against the Inspector General of the National Police Service, Hon. The Attorney General, Naomi Njoroge and P.C.E.A Jitegemea Credit Sacco. The applicant swore an affidavit in support of the application.

2. I have considered the grounds stated on the face of the amended Originating Summons plus the facts deponed in the supporting affidavit. The application is exparte in nature and any leave granted may be subject to challenge even after the suit is filed. It is the submission of the plaintiff/applicant that on 18.11.2012, he was a fare paying passenger on board motor vehicle registration no. KAY 713F. He said he suffered serious injuries when the aforesaid motor vehicle was hit by a terrorist grenade attack along 2nd Avenue Eastleigh, Nairobi. It is the applicant's averment that due to the extensive injuries he suffered, he was not able to follow up the question of compensation with his advocates and as a consequence the time fixed to file an action for compensation lapsed. The applicant submitted that if given leave he intends to sue the Honourable Attorney General on behalf of the Inspector General of the National Police Service for failing to provide protection and security as a citizen thus exposing him to a terrorist attack. He also stated that he would be suing the owner of the motor vehicle for compensation based on the tort of negligence. The applicant also argued that being a layman, he had no knowledge of the law of limitation of actions.

3. After a careful consideration of the material placed before this court and bearing in mind that any party is at liberty to challenge the order of leave before the hearing of the suit, I am convinced that the plaintiff has given plausible reasons to justify his failure to file a suit within the statutory period. I am particularly convinced that the plaintiff/applicant was prevented by his ailment due to the attack from filing the suit on time. Consequently, I allow the summons. The plaintiff/applicant is granted leave of 30 days to file an action for compensation out of time. Costs shall be in the cause.

Dated, Signed and Delivered in open court this 2nd day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant