

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL MISC. APPL NO. 540 OF 2015 (O.S)

JOSEPH GACHAU THIGE.....1ST APPLICANT

EVA NANCY WARUGURU.....2ND APPLICANT

(suing as administrators ad litem of the estate of Nahashon Thige)

VERSUS

DANIEL KAMAU NGUYO.....1ST RESPONDENT

C.I.C INSURANCE COMPANY LIMITED.....2ND RESPONDENT

RULING

1. The application by way of Originating summons dated 1st December, 2016 seeks orders that this court be pleased to grant leave to the Plaintiffs/Applicants to file suit out time for judgment against the Defendants herein for *inter-alia* damages under the Law Reform Act Cap 26 laws of Kenya and damages under Fatal Accident Act Cap 32 Laws of Kenya.
2. The application is premised on the grounds stated on it's face and is supported by the affidavit sworn by Joseph Gachau Thige the 1st Applicant. According to the Applicants, the deceased, Nahashon Thige Gachau, was involved in a fatal road accident on 27th February, 2012. Subsequently, the Applicants through their advocates entered into negotiations with the Defendants with a view to settling the claim. There was correspondence between the parties and the forwarding of the documents in support of the claim by the Applicants to the 2nd Defendant. However, the 2nd Defendant did not respond to the Applicants advocate's last letter dated 14th August 2016 which was in response to the 2nd Defendant's letter dated 20th August, 2014 asking for more documents. In the meantime, the Applicants claim became time barred, hence the application at hand.
3. The application was argued orally. A list of authorities was filed by the Applicants counsel. I have considered the application and the said authorities.
4. The cause of action arose on 27th February, 2012. By the date of the filing of the instant application on 4th December, 2015, the limitation of time had caught up with the Applicants. Section 4(2) of the limitation of Action Act Cap 22 Law of Kenya provides for actions founded on tort to be brought to court within three (3) years. The Applicants came to court after about ten (10) months after the lapse of time.
5. The Applicants explanation is that the parties had engaged in negotiations. Correspondence between the Applicants' Advocates and the 2nd Defendant have been exhibited. Indeed the said correspondence confirms that there were negotiations between the parties. What does this portend for the parties?
6. 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 along lapse of time. It is not to extinguish claims.”

7. As was held by the Court of Appeal in case of **Gatune vs Headmaster, Nairobi Technical High School & Another [1988] KLR 561**, protracted negotiations with the Attorney General for payment of damages are taken seriously and a reasonable claimant can delay in filing suit. I would say the same concerning negotiations with an insurance company.

8. I find the delay in filing suit in the circumstances of this case was not inordinate and the explanation given is satisfactory. Consequently, I exercise this court’s discretion and allow the application. The Applicant to bear the costs of the application.

Dated, signed and delivered at Nairobi this 15th day of Sept, 2016

B THURANIRA JADEN

JUDGE