



**REPUBLIC OF KENYA**

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

**CIVIL MISC. APPLICATION NO. 215 OF 2012 (O. S.)**

**MULEI MWENDWA.....APPLICANT**

**VERSUS**

**1. TACKAN ARUSI MWANDINDA  
2. NATIONAL INTELLIGENCE .....RESPONDENTS**

**SECURITY SERVICES**

**3. THE HON. ATTORNEY GENERAL**

**R U L I N G**

1. By an application dated **27<sup>th</sup> September, 2012**, the Applicant seeks leave to file the suit against the Respondent out of time, the limitation period, since the cause of action arose having lapsed. The application is premised on grounds that the delay in filing the suit was not intentional; the Applicant has a plausible explanation for the delay and unless leave is granted the Applicant may not be compensated for the loss incurred.
2. The Applicant deposed an affidavit in support of the application where he stated that he retained the firm of **Janet Mulwa and Company Advocates** who filed a suit that was later withdrawn after they disagreed. A notice was not issued due to the existence of **CMCC No. 212 of 2008** which was subsequently withdrawn.
3. It is averred that the firm of **Janet Mulwa & Co.** which the Applicant had instructed at the outset filed **CMCC 212 of 2008**, a suit aimed at recovery of damages arising out of an accident that occurred on **3<sup>rd</sup> February, 2007**. Consequently the firm of **E. K. Mutua** that was retained by the Applicant also filed **Civil Suit No. 7 of 2010** in that regard oblivious of the existence of the other suit. The fact was brought to their attention by the **3<sup>rd</sup>** Respondent.
4. It is alleged that a notice to withdraw **CMCC 212 of 2008** was filed on the **10<sup>th</sup> September, 2010**. No such notice was adduced by way of affidavit evidence. Without proof of the alluded notice, **CMCC 212 of 2008** may still be in existence. It will therefore be unprocedural for this court to grant leave sought.
5. In the premises, I dismiss the application with no orders as to costs.
6. It is so ordered.

**Dated at Kitui this 16<sup>TH</sup> day of NOVEMBER, 2015.**

**L. N. MUTENDE**

**JUDGE**

**Dated, Signed and Delivered at Machakos this 2<sup>nd</sup> day of December, 2015.**

**P. NYAMWEYA**

**JUDGE**