



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPL. NO. 340 OF 2013**

**NAOMI WANJIKU MWANGI .....APPLICANT**

**versus**

**MAHENIA DAVID & 2 OTHERS .....RESPONDENTS**

**RULING**

1. By a notice of motion under section 95 of the Civil Procedure Act and orders 50 rule 6 and 51 the applicant moved the court for order that the proposed plaintiffs be granted leave to file suit out of time.
2. It was supported by the affidavit of one NAOMI WANJIKU MWANGI in which it was deponed that the deceased died on 14th February 2009 as a result of a road traffic accident along Nyeri, Nyahururu road leaving them financially handicapped and therefore the applicant had no source to enable them apply for letters of administration.
3. That she only managed to file for letters of administration ad litem earlier 2013 through the firm of Mugambi & Co. advocates who agreed to do the petition on pro-bono.
4. It should be pointed out that this application should have been brought under the provisions of section 27 and 28 of Limitation of Actions Act which gives this court jurisdiction to extend the limitation period in cases of this nature.
5. I have looked at the affidavit in support of the application and is of the view that the facts deponed therein does not constitute facts required under section 30(3) of the Limitation of Actions Act. However in view of the provisions of Article 159 of the constitution which demands that the court looks at substantive justice on the authority of DIVECON LTD SHIRNKHAN SADRGDIN SANNANI CIVIL APPEAL NO. 142 OF 1992 which give the intended defendant an opportunity to challenge the grant of the order at the hearing I am of the considered opinion that the balance of convenience is in favour of granting orders sought.
6. Leave is therefore granted to the applicant to file suit out of time which should must be filed and served within the next 14 days from the date herein with no order as to cost.

Dated, signed and delivered at Nyeri this 13th day of June 2014.

J. WAKIAGA

JUDGE

Court: The ruling is read in open court in the absence of the parties.

J.WAKIAGA

JUDGE

13/6/2014