

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APP NO. 819 OF 2013

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

**IN THE MATTER OF APPLICATION FOR LEAVE TO FILE SUIT OUT OF TIME BY
MARTIN MUTTISYA MUTHENGI**

RULING

The application under consideration is an ex parte Originating Summons dated 14th August 2013 brought under section 27 of the Limitation of actions Act cap 22, section 3A of the Civil Procedure Act Cap 21.

The Applicant is seeking to be granted leave to file a suit out of time against the Standard Group Limited and Kenneth Kwama their editor.

The claim emanates from a defamation claim arising from breach of duty of care by the Standard chartered Group Limited owners of Standard newspaper and Kenneth Kwama their editor. The applicant raised his complaint before the Commission and it was established that the applicant had a cause of action against the intended defendants and they were ordered to offer him an apology which they did subsequently the applicant further filed a suit Civil suit no. 325 of 2012 seeking damages for the prejudice he suffered due to the defamation but the same was struck out for having been filed out of time.

The applicant argues that the defendants will not suffer any damages as they have been following the matter since it was struck out and can't have lost their evidence but on his part the applicant was seriously prejudiced by the defendant's defamation and continues to suffer prejudice and urged the Court to allow the suit be heard on merit as the delay in filing the said suit was not intentional.

The application was supported by the affidavit sworn by Martin Mutisya Muthengi dated 14th August 2013. The application was heard ex-parte on 16th July 2012. Counsel argued that the Complaints commission gave its ruling on 22/9/2011 and the applicant ought to have filed the suit for damages by 10/8/11 but filed the same on 26/10/11 as HCC 325/2012 and the same was subsequently dismissed for being filed out of time without leave of Court. Miss Mutuku counsel for the applicant argued that the delay wasn't intentional and the same was excusable.

I have considered the application and note the following from the annexures, the alleged defamatory words were published on 10th August, 2010. The Complaint was filed before the Complaint's Commission on the 15th November, 2010 by the Applicant Counsel. The matter was heard and the decision was rendered on 22nd September, 2011. The applicant ought to have filed suit on the 10th August, 2011. He filed HCC No. 325 of 2012 on June, 2012, 10 months later. HCC No. 325 of 2012 was struck out for having been filed out of time. The date the said suit was struck out has not been indicated to this Court, nor has the Court order been annexed to this application. The Originating Summons under consideration was filed on the 20th August, 2013.

The applicant claims that he filed this application a month after his previous suit is struck out. The applicant does not explain why he didn't file suit within time? He was not barred from filing suit even after filing the complaint. He has failed to annexure the Court order to show this Court when the previous suit was struck off. The letter he refers as having been written by his Counsel MMM-V is not annexed. It is well over four years since they alleged defamation took place. A party must be diligent in pursuing a

claim against another party. Merely stating that the intended defendants will not suffer any damages is not satisfactory. I therefore find no merit in the application and dismiss it as no orders as to costs.

Orders accordingly.

Dated, signed and delivered this **12th** day of **September 2014**.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Applicant**

.....**Court Clerk**