

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**CIVIL DIVISION**

**MISCELLANEOUS CIVIL APPLICATION NO. E447 OF 2025**

**TERRY WAITHIRA NJONGE.....1<sup>ST</sup>**  
**APPLICANT**

**RUTH AJANDO AYIRA.....2<sup>ND</sup>**  
**APPLICANT**

**=VERSUS=**

**MUTUA MUSEVENI BAHATI.....**  
**.....RESPONDENT**

**RULING**

1. This an Application for leave to file suit out of time. The same, which is filed by TERRY WAITHERA NJONGE and RUTH AJANDO AYIRA, is dated 18<sup>th</sup> March 2025 and is supported by the Supporting Affidavit of TERRY WAITHERA NJONGE the 1<sup>st</sup> Applicant. The Applicants are the legal representatives of the Estate of OSCAR LUVAHA (Deceased). The Affidavit was sworn on even date.
2. The intended suit relates to the death of the said OSCAR LUVAHA who died or on about 2<sup>nd</sup> October 2010 as a result of a road traffic accident that occasioned him fatal injuries, to which he succumbed.
3. The Application is based on the following grounds:
  - (1) *That the Applicants are the legal representatives and administrators of the estate of OSCAR LUVAHA (Deceased). Who died on or*

*about 2<sup>nd</sup> October 2020 as a result of a road accident that occasioned him fatal injuries, to which he succumbed thereafter.*

- (2) That due to financial challenges and difficulties in getting most the of the documents, they were only able to instruct their Advocate, sometime in August 2023.*
- (3) That their Advocate upon receiving instructions filed MAGISTRATE'S COURT SUCCESSION MISC CAUSE NO. E148 OF 2023 (In the Estate of OSCAR LUVAHA).*
- (4) That these Letters of Administration ad litem, were issued to them, long after the time to file suit against the Defendant had lapsed.*
- (5) That the limited Grant of the Letters of Administration ad litem was thereafter applied for and obtained well after lapse of time. (My emphasis)*
- (6) That the two, were made co-administrators of the said estate.*
- (7) That it is only fair and just and in the interest of justice that they be allowed to file suit out of time against the Defendant, for the recovery of damages under the Fatal Accidents Act and the Law Reform Act.*
- (8) That their current advocate has informed them, and which information they verily believe to be*

*true, that the period to bring suit against the Respondent has since lapsed.*

*(9) That no prejudice will be occasioned to the Respondent if this suit is instituted since the Respondent will be accorded an opportunity to defend himself.*

*(10) That they stand to suffer irreparable loss and damage, should this Application not be allowed; and that the intended suit needs to be heard and determined on merit.*

*(11) That the intended suit is meritorious and has high probability of success.*

*(12) That it is in the interest of fairness and justice that this Application be allowed.*

4. This Application like the applications of this nature, has been brought ex-parte. Hence it is unopposed. Despite being an opposed, the Court cannot just grant it. This Court has to satisfy itself that the delay in filing the suit is not unreasonable or too prolonged; and that the delay has been satisfactorily explained, with sufficient reasons being given and proof thereof being provided. The Court has also to determine such an application in context of the circumstances, as well as the dictates of justice and fairness.

5. Notably, part of the period of the delay was spent on pursuing the letters of administration to the deceased's estate. Those letters were finally obtained on 21<sup>st</sup> November 2023. Which was only one month outside the

three (3) years statutory limitation period prescribed in Section 4 (2) of the Limitation of Actions Act (Cap 22 Laws of Kenya).

6. Despite obtaining the said letters, and being eligible to seek leave and file suit out of time, the Application for leave (this Application) was not filed until 18<sup>th</sup> March 2025. Which was 27 months after obtaining the said letters.
7. The Applicant has in this Application stated that the said letters, were having been issued/obtained on 2<sup>sts</sup> November 2023, this was a date long after the time for filing the suit had lapsed. This is not true, as that date was only one month outside the limitation period. Indeed, that limitation period of three years lapsed on 2<sup>nd</sup> October 2023. The deceased having died on 2<sup>nd</sup> October 2020.
8. The granting of leave to file suit being discretionary and within the Court's discretion and not as of right, the discretion need be exercised in favour of an Applicant that is candid, truthful and honest. Not one who misrepresents facts, conceals material facts, suppresses the truth, or attempts to mislead the court; as is the case in this Application.
9. For those reasons, this Application fails, and is hereby dismissed accordingly.

**DATED and DELIVERED at NAIROBI on this 25<sup>th</sup> day of November 2025**

**PROF (DR) NIXON SIFUNA  
JUDGE**