

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E828 OF 2024

NYAMU WANYOIKE.....APPELLANT
VERSUS
AGGREY ODIWOUR.....RESPONDENT

**(Appeal from the judgement and decree, of Hon. JW
Nasimiyu, Resident Magistrate/Adjudicator, of 15th July 2024,
in Nairobi SCCC No. E2009 of 2024)**

JUDGEMENT

1. The claim, at the Small Claims Court, was by the appellant, against the respondent. It was for material damage, of Kshs. 540,927.00; which allegedly arose out of a motor traffic accident.

2. The matter was not heard on its merits, for it was dismissed, on 6th June 2024, when it was due for formal proof, for non-attendance. The appellant then filed an application, dated 12th June 2024, seeking reinstatement of the dismissed suit. The respondent resisted that application, on grounds that the suit itself was statute-barred, and urged the trial court not to reinstate it on that ground. A ruling was delivered, on 15th July 2024, where the court ruled that the dismissed suit had been filed outside the limitation period, and proceeded to set aside the orders, made in the ruling of 6th June 2024, for dismissal for non-attendance, and substituted it with an order striking out the suit, for being statute-barred.

3. The appellant was aggrieved, hence this appeal. The principal ground is, essentially, that that suit, at the trial court, was not statute-barred.

4. The claim, at the trial court, was founded on the tort of negligence. Under section 4(2) of the Limitation of Actions Act, Cap 22, Laws of Kenya, an action founded on tort, except for libel and slander, may not be brought after the end of 3 years, from the date on which the cause of action accrued. The provision is not coached in mandatory terms, for there is provision for extension of time, on account of disability; and for reckoning of a weekend or public holiday, when the last day falls on such a day, by virtue of the Interpretation & General Provisions Act, Cap 2, Laws of Kenya.
5. The accident, the subject of the suit, happened or occurred on 19th April 2021. That date, 19th April 2021, was when the cause of action accrued. The 3-year limitation period began to run from 19th April 2021. That 3-year period expired on 18th April 2024, and not on 19th April 2024. 18th April 2024 was the last day of the third year. 19th April 2024 was the first day of the fourth year, from 19th April 2021. Consequently, the suit was filed outside the 3 years envisaged in section 4(2) of the Limitation of Actions Act.
6. Did the appellant benefit from an extension of time to file suit outside the 3 years? If there was such extension, then the suit would have been properly filed, even if it was outside the 3 years. The appellant did not plead to obtaining such extension, and did not place before the trial court an order allowing him to file suit outside the 3 years.
7. Did the last day of the 3-year period fall on a weekend or a public holiday, to justify the filing of the suit outside the 3 years for that reason? As indicated above, the last day of the 3-year period fell on 18th April 2024. 18th April 2024 was a Thursday, so it was not a weekend. It was not a public holiday either. There would have been no basis, therefore, for pushing the last day of the third year to 19th April 2024.

8. The suit, filed at the Small Claims Court, was stale and bad, for having been filed outside of the limitation period. It was incompetent. There would have been no good reason for reviving or reinstating an incompetent suit, for its hearing would have, in the end, met the same fate, striking out for being statute-barred. The trial court had not erred, in declining to reinstate the suit, and in ordering its striking out.
9. The appeal herein is, therefore, unmerited. I, accordingly, dismiss it. The respondent shall have the costs, both here and at the court below. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON THIS 5TH DAY OF DECEMBER
2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Muoki, instructed by Gertrude Matata Waithaka & Associates, Advocates for the appellant.

Mr. Omondi, instructed by Adera & Kenyatta, Advocates for the respondent.