



**Kanyira v Kimani & another (Civil Miscellaneous Application  
E038 of 2025) [2026] KEHC 317 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 317 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CIVIL MISCELLANEOUS APPLICATION E038 OF 2025**

**LN MUTENDE, J  
JANUARY 22, 2026**

**BETWEEN**

**JOSEPH WANJOHI KANYIRA ..... APPLICANT**

**AND**

**JOHN M KIMANI ..... 1<sup>ST</sup> RESPONDENT**

**AMREF HEALTH AFRICA KENYA - SAMBURU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a peculiar application where the Applicant has approached the court through an Ex-parte Originating Summons seeking leave to file a suit out of time against the Respondents, the application having been made after five years from the time within which he was required to institute a suit.
2. The delay is attributed to ignorance and lack of information on the part of the Applicant, even after a P3 was filed to establish the grievous harm that he sustained as a result of a road traffic accident.
3. In an affidavit deposed by the Applicant he states that he suffered multiple fractures of his right leg, a degree of injury that was assessed as grievous harm. That following the accident he was traumatized, depressed as he faced a permanent disability, was impoverished and in despair.
4. That the outset of Covid-19 pandemic left him immobile and he had to stay indoors most of the time, during the year 2020 and 2021. That the police at Ol Moran Police Station promised to prefer charges against the 1<sup>st</sup> Respondent of careless driving upon him healing. And, he expected the 1<sup>st</sup> Respondent to inform his insurer so as to compensate him.
5. That in December, 2024, a retired police officer and a neighbour brought to his attention the right to pursue compensation that is when he instructed an advocate to issue a demand letter and statutory notice to the insurer.



6. I have considered the Ex-parte application and affidavit in support. Section 4(2) and 27 of *Limitation of Actions Act* provides thus;

4 (2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.

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- (1) Section 4(2) does not afford a defence to an action founded on tort where—
  - (a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and
  - (b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and
  - (c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and
  - (d) the requirements of subsection
- (2) are fulfilled in relation to the cause of action. (2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—
  - (a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and
  - (b) in either case, was a date not earlier than one year before the date on which the action was brought.
- (3) This section does not exclude or otherwise affect—
  - (a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or
  - (b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.

7. In *Mary Osundwa v Nzoia Sugar Company Limited* [2002] eKLR Osiemo J stated thus in respect of Section 27 of the *Limitation of Actions Act*;

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts of



negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort.”

8. The action herein is for damages for negligence and personal injuries sustained as a result of alleged negligence. The alleged crucial facts of the matter were not known until later in time as expounded. The injuries sustained cannot be dismissed as minor.
9. The explanation given for the delay in taking legal action against the Respondents is ignorance of rights to compensation on the part of the Applicant who was waiting for the State to prosecute the Respondents.
10. In determining whether the delay is inordinate, so as to defeat the intention of the law of Limitation of Actions Act, each case must be considered according to its own facts. The Respondents will be granted the opportunity to defend the claim hence the question of prejudice may not arise.
11. The upshot of the above is that delay has been satisfactorily explained, therefore, I grant the Applicant leave to file a suit against the Respondent herein with no orders as to costs.
12. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF JANUARY, 2026.**

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**L.N. MUTENDE**

**JUDGE**

