



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**MISCELLANEOUS APPLICATION NO 26 OF 2016**

**ELIDAH AWINJA ONGUCHE.....1<sup>ST</sup> APPLICANT**

**PAUL OTIENDE.....2<sup>ND</sup> APPLICANT**

**VS**

**INTERNATIONAL LIVESTOCK RESEARCH INSTITUTE.....RESPONDENT**

**RULING**

1. By an *ex parte* application dated 10th March 2016 and filed in Court on even date, the Applicants seek leave to file suit against the Respondent out of time. The application which is supported by the affidavit of the 1st Applicant, Elidah Awinja Onguche is based on the following grounds:
  - a. That the Respondent had represented to the Applicants that it enjoyed diplomatic immunity including immunity from suit and legal process;
  - b. That acting on the representation by the Respondent the Applicants, through their Advocates, lodged a claim with the Ministry of Foreign Affairs;
  - c. That the said claim was lodged within time and the Applicants believed that the Ministry of Foreign Affairs would effectively resolve the matter as an arbitrator mandated by a host country agreement but the Ministry failed to resolve the dispute as anticipated;
  - d. That upon seeking legal counsel, the Applicants learnt for the first time that the legal notice granting the Respondent immunity did not include immunity from suit and legal process;
  - e. That the representation by the Respondent to the Applicants that it could not be sued on account of immunity from suit and legal process was therefore misleading and fraudulent;
  - f. That the Applicants learnt of this fraud in the year 2015 when the Respondent failed to avail a copy of the legal notice relied upon;
  - g. That upon obtaining a copy of the legal notice, the Applicants discovered that immunity from suit and legal process was not covered;
  - h. That the Respondent's non disclosure of the contents of the legal notice entitles the Applicants to seek leave under Section 26 of the Limitation of Actions Act (Cap 22) to file suit out of time;

- i. That the Applicants have a strong and legitimate claim against the Respondent.
2. The Applicants in this application are administrators *ad litem* of the estate of James Andango Ongondo (deceased) who was an employee of the Respondent. The intended suit arises from the Applicants' claim that the deceased died from an occupational disease. The suit would therefore be based on both tort and contract.
3. Section 4 of the Limitation of Actions Act provides that actions founded on contract may not be brought after the end of six (6) years from the accrual date while an action founded on tort may not be brought after the end of three (3) years from the date on which the cause of action accrued.
4. The cause of action in this case arose upon the death of James Andango Ongondo on 3rd April 2000. The Applicants state that they were prevented from coming to Court in time by an erroneous representation by the Respondent, which they term as fraudulent. They therefore seek extension of time under Section 26 of the Limitation of Actions Act.
5. Apart from a general statement that they relied on a misrepresentation by the Respondent, the Applicants did not provide any proof of fraud and Section 26 does not therefore apply. That being the case, this Court lacks jurisdiction to entertain the Applicants' claim and the application for enlargement of time fails and is dismissed with no order for costs.
6. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF JULY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Muturi for the Applicants

No appearance for the Respondent