



**Odoyo v Director of Public Prosecutions & another (Miscellaneous Application E989 of 2024) [2025] KEHC 11456 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11456 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS APPLICATION E989 OF 2024  
JN MULWA, J  
JULY 31, 2025**

**BETWEEN**

**SAMUEL ODOYO ..... PLAINTIFF**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By an *ex parte* application dated 25/10/2024, the Applicant Samuel Odoyo sought the following orders:-
  1. That the Applicant be granted leave to file suit out of time.
  2. That the draft annexed plaint hereto be deemed as duly filed upon payment of the requisite court fees.
  3. That costs of the application be in the cause.
2. The application is predicated on grounds on its face and supported by an affidavit of sworn on 25/10/2024 by the Applicant; and further premised on Order 37 Rule 6 of the Civil Procedure Rules (CPR)
3. The Applicant's reasons for the delay as seen from his material before the court are that he had to wait for the outcome of a criminal case lodged against him in the Anti-Corruption case NO. 49 of 2018 wherein judgment was delivered on 7/12/2022 and the appeal filed thereafter being Criminal Appeal No. E015 of 2022 and determined on 27/02/2023 in his favour whereof he was acquitted for



the offences under section 215 of the Criminal Procedure Code (judgment annexed as exhibits marked as “so -1 and so -2” which translates to a delay of 20 months after the applicants acquittal).

4. In opposition to the Applicants motion, the Respondents filed Grounds of Opposition dated 26/11/2024, by which the Hon. Attorney General stated that:-
  - i. The intended suit does not fall among the causes of action to warrant extension of limitation period under provisions of Section 27 of the Limitation of Actions Act, Cap 22 laws of Kenya
  - ii. That the application is bad in law, Incompetent, misconceived, misplaced and an abuse of the court process.

### **Analysis and determination**

5. In the first instance, the instant application is premised on Order 37 Rule 6 of CPR that provides the manner of approaching the court in applications under Section 27 of the Limitation of Actions Act made before filing of a suit shall be made ex parte by originating summons supported by affidavit.
6. This is not the case in this application as prima facie the motion is not by an originating summons as is envisaged; but by a miscellaneous application.
7. Secondly, Section 27 Cap 22 Laws of Kenya provides for actions that extension of limitation may be brought, being in case of ignorance of material facts in actions for negligence, nuisance or breach of duty consisting of or including damages in respect of personal injuries of any person.
8. The above is not applicable in the matter before the court. The Applicant was at all material times seized of the material facts and the court has not been told otherwise to invoke its inherent power to excuse the delay.
9. Section 27 (2) provides that “requirements of this subsection is fulfilled in relation to a cause of action if it is provided that material facts relating to that cause of action would 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 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 end of that period.
10. Additionally, Section 42 excludes certain proceedings from limitation under the Act; it provides:-
  1. This Act does not apply to:-
    - a. Criminal proceedings; or
    - b. Matrimonial proceedings; or
    - c. An action to recover possession of Trust Land
  - J a proceeding to recover an amount for which a person is liable under Section 51 or 52 of the Anti-Corruption and economic Crimes Act, 2003 or of a proceeding under Section 55 or 56 of that Act.
11. In respect to the material before the court, it is evident that an action founded on tort as in the malicious prosecution alleged by the applicant is not among the actions covered above.



It is trite that an acquittal of a criminal case does not necessarily connote malicious prosecution as held in the case of Tobias Moinde Kengere v. Postal Corporation.

12. Section 193A of the *Criminal Procedure Code*, Cap 75 states that the fact that a matter in issue in a criminal case is also an issue in a pending civil case will not be grounds for delaying or stopping criminal proceedings.

Civil proceedings can proceed concurrently with criminal proceedings as held in the case of *Maura Muigana v. Stellan Consult Limited & 2 Others* (unreported) wherein the court in constitutional petition No. E033 (above) adding that courts only block parallel proceedings in very special circumstances.

13. While on the issue at hand, in the English cases of *Jefferson Ltd v. Bbetcha* [1979] AII ER 1108 (CA) and *BBC, XP Lavelle* [1983] 1 AII ER 241 (QBD) the courts observed and emphasized that:-

“... there was no established principle of law that if criminal proceedings were pending against a defendant in respect of the same subject matter, he or she should be excused from taking any further steps in the civil proceedings which might have the result of disclosing what his defence of is likely to be in the criminal proceedings...”

14. The above observations were addressed in the case of *Lalchard Fulchand Shah v Investments & Mortgages Bank Ltd & 5 Others* [2018] eKLR and *Amir Lodges Ltd & Another v. Mohammed Omar Shariff & Another* [2022] eKLR.

The law is therefore that pending criminal proceedings does not bar a party from instituting Civil Proceedings, which are directly, indirectly, or substantially in issue in any pending civil Proceedings or criminal proceedings.

15. Juxtaposing the above principles to the matter before the court, there is no reasonable explanation and none has been provided as to why the Applicant, with all the material facts within his knowledge, failed to institute civil proceedings for malicious prosecution within the statutory period as he waited for the final determination of the criminal proceedings.

16. Even after he was acquitted by the High Court of the Criminal offense under the Anti-Corruption charges, the Applicant took about 20 months to file the instant application seeking leave to bring civil proceedings against the Hon. Attorney General as observed from the draft plaint, whereof he seeks special damages to the tune of sum of Kshs. 275,074,130/- and general damages for wrongful arrest, unlawful confinement and malicious prosecution.

17. There being no compelling reasons provided by the Applicant for the inordinate delay, the application dated 25/10/2024 is dismissed with no orders on costs.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> JULY, 2025**

.....

**JANET MULWA.**  
**JUDGE**

