

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISCELLANEOUS NO. 99 OF 2014

JUDY KEMUNTO KETERE

(suing as an Administratrix of the estate of

STEPHEN KETERE MOSIANY (DECEASED)PLAINTIFF

VERSUS

REPUBLICRESPONDENT

RULING

1. By way of *ex parte* Chamber Summons the Applicant seeks leave of this court to extend the period to file a suit.

2. The application is premised on grounds that failure to file the suit out of time was not intentional; the delay was caused by financial constraints on the part of the applicant who had to obtain Letters of Administration in respect of the estate of the deceased.

3. In a supporting affidavit, it is deponed that the deceased a husband to the applicant was involved in a Road Traffic Accident on the 7th day of **December, 2010** at **Magina** along **Naivasha** Road whereby he sustained severe injuries that caused his death. She was not able to cater for her family needs due to financial constraints. Having raised sufficient funds to file the suit she now seeks leave to do so.

4. Evidence by way of affidavit adduced indicate that the deceased, **Stephen Katere Mosiany** was involved in a road traffic accident on the 7th **December, 2010** whereby the driver of the accident motor-vehicle registration number KAE 961D was charged with the offence of causing death by dangerous driving in **Traffic Case No. 47 of 2010**. At the time of issuance of the abstract from police on the accident on **19/1/2011** the matter was pending trial.

5. This is an action of negligence hence founded on tort which should have been brought within three (3) years from the date the cause of action accrued.

6. However, time within which such an action can be brought can be extended by leave of court.

7. There being nothing to suggest any good reason why the order sought should not be granted, I do exercise my discretion

8. Leave is therefore granted to the Applicant to file the suit out of time within **14 days**.

DATED, SIGNED and DELIVERED at MACHAKOS this 4TH day of NOVEMBER, 2014.

L.N. MUTENDE

JUDGE

