



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

MISC. CIVIL SUIT NO. 3 OF 2018

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION TO FILE SUIT/CLAIM OUT OF TIME

BETWEEN

DICKSON ODIWUOR NYAWANDA.....CLAIMANT

VERSUS

SUKARI INDUSTRIES LIMITED.....RESPONDENT

RULING

1. **DICKSON ODIWUOR NYAWANDA** (the applicant) has filed this originating summons dated 7th February 2018 seeking leave to file a claim out of time against Sukari Industries. He explains that he was an employee of the said company and claims to have sustained injuries in the course of his duties on 5/11/2014.

2. He reported the accident to the Respondent who through its then Insurance agent one **TOM OKECH**, advised him to surrender all his medical records to the respondent and exercise patience and await for compensation – he complied, but thereafter nothing positive has been forthcoming.

3. Instead on 15/08/2016 by an oral notice, the respondent terminated his employment contract. It was the continuous assurances from the Respondent that compensation was forthcoming which led to his failing to file his claim within the period allowed in law – yet he has a good claim. It is his contention that the delay was not deliberate.

4. The applicant annexed copies of his treatment notes and a letter from the Respondent's insurance requiring him to submit to Dr. Otiemo for medical examination.

5. The explanation given is reasonable and the delay has not been inordinate. The applicant merits being given a chance to pursue his claim. He is directed to file and serve his pleadings within 14 days hereof.

6. The ruling herein applies *mutatis mutandis* to **MISC. CIVIL APPLICATION NO.4 OF 2018 – NICODEMUS OTIENO OPIYO – VS- SUKARI INDUSTRIES**.

Delivered and dated this 08th day of March, 2018 at Homa Bay

H.A. OMONDI

JUDGE

Court:- Ruling read.

H.A. OMONDI

JUDGE