



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
MISCELLANEOUS CIVIL SUIT NO.42 OF 2017
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
DISMAS TOBESI AURA.....CLAIMANT
VERSUS
SUKARI INDUSTRIES LIMITED.....RESPONDENT
RULING

1. By an originating summons dated 30th August 2017, the applicant **DISMAS TOBESI AURA** seeks leave to file his claim out of time.

He explains that he was an employee of the respondent (**SUKARI INDUSTRIES LIMITED**) when in the course of his duties as a console operator in the milling area, on 27/12/2013 when he was hit by a metal object and suffered serious injuries for which he claims compensation.

2. On 04/04/2014, the applicant through the instructions of the respondent, and for purposes of compensation, filed in a **Directorate of Occupational Safety and Health Services ML/DOSH/FORM 1**. However on 15/3/2017 by an oral notice of termination of contract, the respondent ordered the applicant to stop offering his services. At the time of such termination, the claimant had not been compensated despite several assurances by the respondent that the claim forms had been sent to the Insurer, and payment was being processed.

3. Upon termination of the employment, the respondent completely cut off links with the claimant and did not want to hear from him despite knowing very well that the applicant had not been paid any compensation.

He now realized that the continuous assurances by the respondent were intended to encourage him to wait until the time within which to file suit expires, yet he has a good claim against them.

It is his contention that the delay was not deliberate.

4. The applicant has annexed copies of his treatment notes and the claim for compensation form.

5. From the attached documents and the explanation given, I am satisfied that the applicant deserves a chance to pursue his claim. The application is merited and leave is granted to the applicant to file his claim out of time. The same must be filed within 14 (Fourteen) days hereof.

b) The costs of this application shall abide the outcome of the substantive suit.

c) The orders herein apply *mutatis mutandis* to **HC MISC. CIVIL APPLICATION NO.43 OF 2017**.

Delivered and dated this 20th day of November, 2017 at Homa Bay

H.A. OMONDI

JUDGE