



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO.157 OF 2014

IN THE MATTER OF LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA SECTION
22,27& 28.

AND

IN THE MATTER OF THE PUBLIC AUTHORITIES LIMITATION ACT.

AND

IN THE MATTER OF AN APPLICATION BY JEREMIAH WATAH BARASA TO FILE SUIT OUT
OF TIME AS AGAINST THE MINISTRY OF DEVOLUTION AND PLANNING.

EXPARTE

RULING

Jeremiah Watah Barasa the applicant in this matter has moved this court by way of Originating Summons under Order 37 Rule (6) of the Civil Procedure Rule 2010 seeking the following orders;

That this Hon. Court be pleased to grant leave to the applicant herein to file suit out of the prescribed time against the Ministry of Devolution and Planning and that costs of the application be provided for.

The applicant is an ex-parte application. It is based on 6 grounds stated on the face of the application together with the affidavit of the applicant dated the 27th of January 2014. The grounds are reiterated in the applicant's affidavit.

The applicant deposes that he was employed by the then Ministry of Youth Affairs & Sports with effect from the 9th October 2009. That on the 27th February 2010 while under the respondent's employment as a NYS Private Officer in Garissa Mbalabala Farm Unit he fell into a ditch and sustained injuries to the left limp joint which on the farm on security Patrols. That he personally sought for medication as his employer had neglected and declined to treat him nor release him from duty immediately to seek proper medical attention. That he managed to get a loan from Equity Bank and paid for the total knee replaced as his employer was not willing to pay for the same having been admitted in hospital from the 31st March 2011 to 11th April 2011. That recently his employer allowed him to follow up and agreed to compute any payment under the Work Injury Benefit Act without factoring in what he had spent for treatment and compensation for the injuries suffered.

That despite a demand being made and notice of intention to sue being given by the firm of Mandala &

Co. Advocates, the respondent has refused failed or neglected to make good the claim. That he was unable to file the suit within the time because of the limp replacement and could not walk, working under the disciplined forces and could not get permission to follow up the matter until recently on the 15th July 2013 when the Director General Youth Service wrote a letter confirming his serious injuries and recommended that he be allocated less strenuous duties. That it is only upon released to attend the burial of his uncle that he sought medical attention under very harsh condition eroding his financial base and it is only through the help of relatives that he has been able to make the application.

I have read and considered the facts as deposed together with the annexures. It is apparent that the applicant has been following up the issue of his injury with his employer. He blames his employer for not giving him a chance to follow up the matter. I am aware the limitation period for a personal injury claim under the Limitation Actions Act Cap 22 provides that the suit must be filed within 3 years. Section 4 (1) (2) states that an action founded on tort may not be brought after the end of 3 years from the date on which the cause of action occurred.

The reasons given by the applicant for failing to file suit within the prescribed time are persuasive, I will give him the benefit of doubt and allow him to file suit out of time. I do recognize that even as I allow the application the extension of limitation period can be challenged at the hearing (see **Mary Wambui Kabugu Vs. Kenya Bus Services Ltd. C. A No. 195 – 195**).I therefore grant leave to the applicant Jeremiah Watah Barasa to file suit out of the prescribed time against the Ministry of Devolution and Planning. The applicant shall filed suit within 21 days from the date of this ruling.Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this **4th** day of **April** 2014.

R. E. OUGO

JUDGE

In the presence of:

.....For the Applicant

.....For the Respondent

.....Court Clerk