REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

HIGH COURT CIVIL MISC. APPLICATION 78 OF 2004

JANE MUTHINI MWANGI :: APPLICANT

VERSUS

EAST AFRICAN PACKAGING INDUSTRIES LTD :::::::::::::: RESPONDENT

R U L I N G

The application dated 30/3/04 is by way of Originating Summons brought under Order 36 Rule 30 of the Civil Procedure Rule and Section 27 of the Limitation of Actions Act seeking extension of the time within which to institute civil proceedings against the Respondent for compensation for the applicant's husband who died while on duty as a mechanic with the Respondent's Company.

The application was supported by the affidavit of the applicant, the administrator of the estate of her late husband. Deceased is said to have been employed as a motor mechanic and that he sustained injuries on 19/3/97 while on duty and that the employer failed to compensate the Estate and that they were not aware of the injuries sustained due to the company's negligence and applicant not aware that she was entitled to compensation under Workerman's Compensation and once she became aware she took steps to file this application. As per limited grant of letters of Administration issued on 5/4/04, the applicant's husband died on 21/6/1997. It is now over 7 years since the death. The applicant's contention is that she was ignorant of the fact that the husband died out of injuries sustained at his place of work. She annexed the register of death JMB. In the said register the cause of death is indicated as Broncho Pneumonia and the doctor suspected that he had HIV infection.

There is no evidence that the deceased suffered any injuries as a result of an accident. Even if she was granted leave to file the suit out of time there is no evidence that the deceased died out of the negligence of the employer nor can a claim under Workman's Compensation be sustained.

There is not good reason as to why the time for filing the suit against the Respondent should be extended.

The application is hereby dismissed with costs.

Dated, read and delivered at Machakos this 14th day of October 2004.

R.V. WENDOH
JUDGE