

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 145 OF 2016

CYRUS OMBUNA MACHINI.....PLAINTIFF

VERSUS

SAFARICOM LIMITED.....DEFENDANT

RULING

1. Before this court is the Plaintiff's notice of motion dated 12th May, 2016. He is seeking leave to file suit out of time. His motion is brought under order 37 rules 6 (1), order 50 rule 5 of the Civil Procedure Rules and Sections 1, 1A, 1B, 3B & 3A of the Civil Procedure Act.

2. The motion is premised on the grounds set out on the body of the motion and the supporting affidavit of the Plaintiff sworn on 12th May, 2016. The Plaintiff stated that he was employed by the Defendant at Customer Care Centre as a customer care representative. That due to the nature of his work, he spent long hours on head phones which exposed him to high sound volume. That as a result of the said exposure since the year 2008 he has developed medical complications to his ears. He was treated and later fitted with hearing aids. Despite the hearing aid, he continued losing his hearing capacity.

3. He stated that he was diagnosed with a bilateral sensor neural hearing loss and a recommendation by doctors is that he be fitted with a WIDEX clear 440 type hearing aid to relieve the symptoms and amplify sounds and also an electronic hearing and dryer (DRY- GO-UV) to prevent the hearing aids from damage caused by moisture and or water. That he obtained a detailed Medical Report to confirm the status of his health. He further stated that prior to this, he had been treated and a recommendation made that he be transferred to another department but the Defendant did not heed to the recommendation. He alleged that his hearing capacity has been deteriorating with time and it is difficult to determine when the cause of action arose as it has been a continuous cause where he cannot tell when the time started running. That he has since been declared to have suffered a permanent disability as he cannot hear properly.

4. It is apparent from the record that the Plaintiff's injury so to speak occurred in the year 2008 but it was not until the medical assessment report from Ministry of Health dated 4th May, 2016 confirmed that he had lost his ability to hear as a result of the prolonged use of headphones and pains he underwent in 2008. In the circumstances the court finds that the Applicant's application dated 12th May, 2016 has merits and it is hereby granted as prayed. The suit to be filed within 14 days from the date of this ruling.

Dated, signed and delivered at Nairobi this 19th day of January 2017.

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L NJUGUNA

JUDGE

In the presence of

..... *for the Appellants/Respondents*

..... *for the Respondents/Applicant*