

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO 240 OF 2012

ANDREW MULI MWINZI..... APPLICANT

VERSUS

KAY CONSTRUCTION CO. LTD.....RESPONDENT

PRELIMINARY RULING

1. In the application herein (**originating summons dated 2nd April 2012**) the Applicant seeks leave to file suit out of time. The intended suit is for damages for personal injuries received in an industrial accident. Such suit would of course have to be filed before the **Industrial Court**, though in the draft plaint annexed to the application the indicated court is the **Chief Magistrate's Court**.

2. The application is brought under **sections 27 and 28** of the **Limitation of Actions Act, Cap 22** (the **Act**). Section 28(5) of the **Act** provides –

“28.(5) In this section and in section 27 “court”, in relation to an action, means the court in which the action has been or is intended to be brought”.

3. The court to hear the Applicant's application to file suit out of time is thus the **Industrial Court** and he should have applied there. Let him apply before that court. As far as this court is concerned the application is incompetent and is hereby struck out with no order as to costs. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF OCTOBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER 2013