



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
MISCELLANEOUS CAUSE NUMBER 23 OF 2013

BETWEEN

1. TITUS OMAMU MWANZO

2. JONIFA OMAMU

3. WILLIAM OMAMU MUGUGA.....APPLICANTS

VERSUS

OIL COMPANY LIMITED.....
RESPONDENT

RULING

The Applicants filed this Application on 5th June 2013. They seek for leave to file Suit out of time. The Application is made under Section 12(2) and 12(3) of the Industrial Court Act 2011, and is supported by the Joint Affidavit of Titus Omamu Mwanzo and Jonifa Omamu, sworn on 3rd June 2013.

The 1st and 2nd Applicants are the parents of Wycliffe Muguga Omamu who is deceased. The 3rd Applicant is the only child of the deceased. The parents have taken out letters of administration in the estate of their deceased son. The 3rd Applicant has just turned 18 years, and shed off his age disablement, and earned the right to bring the Suit in his own name.

The deceased passed away on 28th January 2008 while in the course of employment. The administrator/administratrix/dependants wish to pursue employment benefits, work injury benefits and general damages against the Respondent, who employed the deceased. In this pursuit, they have invoked the Work Injury Benefits Act No. 13 of 2007, the Fatal Accidents Act Cap 32 the Laws of Kenya and the Law Reform Act Cap 26 the Laws of Kenya.

The Applicants feel they are time barred under Section 90 of the Employment Act 2007, from pursuing these remedies. They argue that the intended Suit is based on the contract of employment, and as such, require the leave of the Court to file Suit out of the prescribed 3 years under Section 90. The intended Suit should have been filed on or before 28th January 2014 in the estimation of the Applicants.

The Application is opposed. The Respondent filed 3 Grounds of Opposition, which are - that the Court has no jurisdiction to entertain claims brought under the Law Reform Act and the Fatal Accidents Act; no sufficient or any reason has been given for the inordinate delay in filing of the Claim; and the

Applicants have no locus to sustain the proceedings herein. The Application was argued on 29th January 2014.

The Court Finds and Orders:-

1. The Chief Justice by Gazette Notice No. 9243 of 27th July 2011, designated all Courts in the 47 Counties presided over by Magistrates of the rank of Senior Resident Magistrate and above, as Special Courts to hear and determine employment and labour disputes within their jurisdictions. Covered areas include Work Injury, and Offences under the Labour Institutions Act, Offences under the Occupational Safety and Health Act and Offences under the Labour Relations Act.
2. Claims under the Law Reform Act and the Fatal Accidents Act are similarly filed in the Magistrate's Court.
3. The intended Suit straddles different areas, and though based on the deceased's employment contract, is not solely an employment dispute. It is a Suit that would be cross-jurisdictional, invoking different Laws with different requirements on time limits.
4. The Court with the closest connecting factors ought to assume the role of the trial forum. Looking at the remedies intended to be claimed, the administrative edict of the Chief Justice in Gazette Notice No. 9243, and the different laws under which the remedies are sought, the Magistrate's Court should assume jurisdiction in the dispute. It is important that the Applicants are not compelled to file separate claims in separate Courts.
5. The Applicants have the locus in bringing this Application and pursuing the intended Suit. They have the letters of administration, and the 3rd Applicant has attained the age of majority. They are entitled to pursue damages and terminal benefits under the various laws stated in their Application.
6. Given the nature of the dispute and the legal pitfalls the Applicants may fall into without the assistance of the Court, *IT IS ORDERED:-*

(a) The Applicants are granted leave to file their intended Claim at the Chief Magistrate's Court Nairobi, within 6 months of the delivery of this ruling.

(b) No order on the costs.

Dated and delivered at Nairobi this 28th day of February 2014

James Rika

Judge