

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 5 OF 2013

MARITINAH MWEKONYO MUSYOKI.....CLAIMANT

VERSUS

ALPHA FINE FOODS LIMITED.....RESPONDENT

RULING

By an originating summons dated 6th February 2013 and filed in Court on 12th February 2013 the applicant seeks leave to file her claim out of time and the Memorandum of Claim attached to the originating summons be deemed to be duly filed upon payment of requisite court fees. The application is supported by the grounds on the face of the application and her affidavit sworn on 6th February 2014.

The application was heard *ex parte* on 12th June 2014 following the failure of the Respondent to Respond to the application and to attend court after service of hearing notice eight times as evidenced by the affidavits of service in the court file.

The applicant who is unrepresented submitted that her employment with the Respondent was unfairly and wrongfully terminated on 29th May 2005, that she was unwell following serious injury while at work in the course of duty as a result of which the cause of action lapsed in May 2011. That she finished treatment in August 2012 and filed the present application on 12th February 2013 following the refusal of the Respondent to pay her terminal dues.

The Claimant attached medical treatment records and medical reports that confirm her injury while at work on 29th November 2005.

Under Section 22 of the Limitation of Actions Act limitation period in respect of a person under disability does not start running until the disability ceases. I am satisfied from the medical record and reports attached to the applicant's affidavit and her oral submissions that she was under disability following the serious injuries she suffered while at work on 29th November 2005. The disability ceased in August 2012. The cause of action therefore commenced in August 2012.

For these reasons I grant the applicant leave to file her claim out of time. The Memorandum of claim filed with the originating summons will be deemed to be properly on record upon payment of the requisite court fees by the applicant.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of June 2014
HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Maritinah Mwekonyo/Applicant present in person

No appearance for Respondent