

IN THE INDUSTRIAL COURT AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION NUMBER 11 OF 2014

BETWEEN

HAWKINS WAGUNZA MUSONYE APPLICANT

VERSUS

RIFT VALLEY RAILWAYS KENYA LIMITEDRESPONDENT

Ex- parte

RULING

The *ex- parte* Applicant herein seeks similar orders, as the sought by Mr. Desidery Tyson Otieno Onyango in the Industrial Court at Mombasa Miscellaneous Civil Application Number 12 of 2014. He seeks extension of time within which to bring a Claim against the intended Respondent, Rift Valley Railways Kenya Limited.

The facts are similar in both Applications. Musonye like Onyango was an Employee of the Rift Valley Railways Kenya Limited. After termination on 12th November 2009, he engaged a Firm of Advocates who initiated negotiations with the Employer. The Advocates arrived at an agreement with the Employer that the Employer pays to the Applicant Kshs. 65,000 all-inclusive, in settlement of the dispute. A discharge voucher was prepared.

The Applicant did not agree with the proposed terms of settlement and withdrew instructions from his former Advocates, instructing the current Law Firm to pursue the dispute in Court. He however feels that the period of 3 years from the date of termination has lapsed, and apprehends he is barred from pursuing the Claim, under Section 90 of the Employment Act 2007.

The Court has found the Claim is not time barred, taking into account the period of negotiations. The findings, reasoning, and conclusion in the matter of *Desidery Onyango* are adopted in this Application, with the result that the Court Orders:-

[a] The Statement of Claim attached to the Application shall be deemed as duly filed upon payment of the requisite Court fees.

[b] The Claim be registered and summons issued upon the payment of the requisite Court fees.

Dated and delivered at Mombasa this 14th day of November 2014

James Rika

Judge