



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT MOMBASA

MISC. APPLICATION NO. 22 OF 2014

MUYANGE THUMBA.....APPLICANT

VERSUS

KENYA PORTS AUTHORITY.....INTENDED RESPONDENT

(Coram)

Rika J,

C/A – B. Kombe

Mr. Mokaya holding brief for Mrs. Maina for Claimant

N/A for Respondent

R U L I N G

Mr. Muyange Thumba filed an *Ex parte* Notice of Motion, seeking leave to institute Claim against the Kenya Ports Authority out of time.

The application is dated 13th October 2014, and based on the Supporting Affidavit of the Applicant, sworn on 16th October 2014.

It came up for hearing on 7th November 2014. The Applicant adopts his Supporting Affidavit, and urges the Court to grant the order for Leave.

The Court Finds:-

1. The Claimant was employed by the Kenya Cargo Handling Services Limited, predecessor to Kenya Ports Authority. It is not clear from his Supporting Affidavit what his role was, or on which date he was employed.

2. His contract was terminated with effect from 1st August 1982.

3. He explains the long delay in moving the Court, on mental illness, which he says he has suffered since 1982.

4. The Medical Report showing his condition was however, prepared 27 years after termination, on 14th July 2009. Curiously, the Report recommends that the applicant be retired, and paid all his dues. His contract was terminated in 1982.

5. Delay is also attributed to negotiations between his Advocates and the KPA. In support of this ground, the Applicant displayed letters exchanged between his Advocates and KPA; between him and KPA; and between his Member of Parliament and KPA. His Advocates' letters were written in 2014, the MP's in 2013 and his own in 2005. There is not a single letter between 1982 and 2005.

6. The Intended Respondent points out, not without some merit, that the Applicant should have pursued any terminal dues against his former Employer KCHSL, in 1982. The Intended Claim, 32 years after the event, would be very difficult for the Intended Respondent to answer to. The Intended Claim has gone stale.

7. The Court is not in a position to assist. IT IS ORDERED:-

a. The Application dated 13th October 2014 is declined.

Dated and delivered at Mombasa this5thday ofDecember.....2014

James Rika

Judge