

REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 100 of 2012

DAVID MAKAU MUTUA.....CLAIMANT

VERSUS

AWANAD ENTERPRISES LIMITED.....RESPONDENT

RULING

The applicant has brought an application by way of the exparte originating summons dated 24.9.2012. He seeks this court leave to file suit out of time to recover damages for work related injury.

The application is supported by the applicant's own affidavit sworn on the same date appearing on the summons.

The application came up for hearing on 14.12.2012 when Madam Sudi appeared for the applicant. The court directed the said Counsel to file written submissions on or before 21.12.2012 to enable the court to make a ruling on 8.2.2013. The submissions were never filed but the court nevertheless proceeded to make this ruling based on the application and the documents on record.

The only issue I will now deal with is whether application is brought before the right court. The answer is negative with respect to Gazette Notice No. 9243 of 5th August 2011 by which the Chief Justice in exercise of power donated under the section 16(2) of the Labour Institution Act (repealed) appointed magistrates of the rank of Senior Resident Magistrate and above to determine all disputes related to work injury benefits.

The said position still obtains by dint of section 32 of the industrial court Act 2011.

Consequently, it is my finding that the summons before me ought to have been filed before a magistrate's court of the rank of senior resident and above. **It follows therefore that this file shall be transferred to the senior resident magistrate's court of Mombasa for determination of the Summons dated 24.9.2012.**

Orders accordingly.

Signed, Dated and Delivered on the 8th day of February 2013.

**Onesmus N. Makau
JUDGE**