

IN THE EMPLOYMENT RELATIONS COURT
AT SUVA
CIVIL JURISDICTION

ERCA Case No 07 of 2023

IN THE MATTER of an application by
the **EMPLOYMENT RELATIONS**
TRIBUNAL Civil No ERT WC38 of 2021.

BETWEEN : **THE LABOUR OFFICER** for and on behalf of the
dependants of the deceased **SAMUELA DONU** of
Vusuya Road, Nausori.

APPELLANT

AND : **SOUTH PACIFIC WASTE RECYCLERS** of 5 Bulei Street,
Laucala Beach State

RESPONDENT

Coram : Banuve, J

Counsels : No Appearance for the Appellant
Sherani & Co for the Respondent

Date of Hearing : 3 November 2025

Date of Ruling : 19 November 2025

RULING

A. Introduction

1. The Appellant appeals the judgment of the Employment Relations Tribunal delivered on 12 May 2023, whereby it dismissed the claim for compensation filed by the Labour Officer on behalf of the deceased workman, Samuela Donu who passed away on 21 January 2017, whilst employed by the Respondent.
2. The Tribunal ruled that the claim for compensation was time barred under section 13 of the *Workmens Compensation Act* [Cap 94] and that the Labour Officer had not established the failure to file the claim for compensation in the Employment Relations Tribunal within 3 years from the time of death of the workman was occasioned by mistake or good cause.
3. The Appellant filed Notice and Grounds of Appeal on 8 September 2024 after leave was granted for it to do so out of time on 28 August 2024.¹ Whilst, the Appellant did not attend the hearing, nor provide an explanation for its absence the Court has nevertheless considered it appropriate in the circumstance given this is a claim for compensation filed on behalf of the dependents of the deceased workman, to take into account the grounds of appeal filed.
4. The orders sought in the **Notice and Grounds of Appeal** are;
 1. ***THAT** the Learned Tribunal erred in law by relying upon the decision of Honorable Justice Wati in *Nirmala Holdings v Labour Officer* [2021] FJHC 341; ERCA 16 of 2016 by holding that a claim for compensation means proceedings for compensation when;*
 - (a) *under section 13 of the Act, a claim for compensation bears a different meaning for recovery of compensation; and*

¹ Ruling on Summons for Leave to Appeal Out of Time per Ratuveli, J

- (b) *the learned tribunal failed to consider that the prescribed manner in which a claim is made is provided in regulation 4 of the Workmens Compensation Regulations 1964 and the prescribed form set out in Schedule 3 of the Regulations.*
2. ***THAT*** *the Learned Tribunal erred in law and in fact by holding that the time to file the claim [] well before 3 year time period lapsed on 21 January 2020. This is incorrect as the Learned Tribunal failed to consider that the claim for compensation was made on 2 January 2017 which was well within the 3 year time period prescribed under section 13 of the Act.*
3. ***THAT*** *the learned Tribunal erred in law and fact in holding at paragraph 16 of the Ruling that the Labour Officer:*
- (a) *did not establish the failure to file the claim for compensation in the Employment Relations Tribunal within 3 years was occasioned by mistake or other good cause and*
- (b) *did not rely on proviso (b)(ii) of section 13*

The above considerations are irrelevant as there were no need for the Labour Officer to establish good cause and mistake stipulated under section 13(b)(ii) of the Act when the notice of accident was provided on 21 January 2017 which was a few days after the death of the workman and the claim for compensation was made on 2 February 2017 which was within 3 years of the death of the worker. Since both the requirements under section 13 of the Act were met the Labour Officer was not required to establish good cause or mistake.

4. ***THAT*** *the learned Tribunal erred in law and fact in holding that the claim is statute barred when the learned Tribunal failed to consider*
- (a) *that section 13 of the Act does not impose any time limitation for filing of the proceedings for recovery of compensation when the requirements for initiating a proceeding for recovery of compensation under section 13 are satisfied;*

(b) that the two requirements stipulated under section 13 of the Act were met and when the notice of accident was provided on 21 January 2017 and the claim for compensation was made on 2 February 2017.

5. The Respondent has filed written submissions and amplified them with oral submissions on 3 November 2025. The Court is grateful for the helpful submissions filed which repeats those that were made before the Employment Relations Tribunal and reflected in its ruling of 12 May 2023.

Analysis

6. The critical issue which the Tribunal based his findings on were that the Labour Officer initiated proceedings for compensation more than 3 years from the time of death of the workman, contrary to section 13 of the *Workmens Compensation Act* [Cap 94]

“ Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been caused by or on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment which he was injured and unless the claim for compensation with respect to such accident has been made within 3 years² from the occurrence of the accident causing the injury or, in the case of death within 3 years³ from the time of death.”

7. The workman passed away on 21 January 2017 and the initial application for compensation bearing number WC/38/2021 was filed on 24 February 2021. The Labour Officer stated the reason why this matter was filed late in the Employment Relations Tribunal on 24 February 2021 was due to an issue of jurisdictional concern.
8. The Tribunal found that the Labour Officer had not discharged the burden of showing that the claim for compensation was filed late, on the basis of mistake or good cause, pursuant to section 13(b)(i) of the Act,⁴ or provided a cogent reason for

² Amendment made in *Workmen’s Compensation (Amendment) Act 2017*

³ See n2

⁴ **Provided that-**

(b) the failure to make a claim for compensation within the period above specified shall not be a bar to the

filing late. The Tribunal found that the jurisdictional issue⁵ raised by the Labour Officer as the basis for filing the compensation claim late, was not a satisfactory reason as the Employment Relations Court had ruled on this issue on 30 October 2020, well before the 3 year period for filing a claim for compensation lapsed on 24 February 2021.

Has the claim for compensation been filed late?

9. The Tribunal has relied on an earlier ruling of this Court in *Nirmala Holdings trading as Ocean View Hotel v Labour Officer* –ERCA 16 of 2016 for the proposition that a notice for claim to the employer of an accident cannot be equated as a claim for compensation. The rationale for this position would stem from the wording of section 13 where the phrase in the first paragraph;

“unless notice of the accident has been given on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured” has been construed as a first notice to the employer. This therefore, it was held, could not be construed as a claim for compensation, but rather just a notice of claim to the employer.

10. This principle of judicial comity⁶ would ordinarily require this Court to follow the ruling in *Nirmala Holdings* however, for the reasons outlined below this Court is unable to do so in this instance;

- (i) Section 13, and the phrase *“unless notice of the accident has been given on behalf of the workman....”* (underlined) when read together with section 14(1) of the Act, must mean that the ‘notice of the accident is an obligation vested on the employer, contrary to what was held by the Court in *Nirmala Holdings*. The immediacy of the obligation to give notice affirms that it is exercisable by the employer, as illustrated by section 13, {“*as soon as practicable*”), section 14 (“*as soon as practicable, but in any event not later than fourteen days after the happening*

maintenance of such proceedings if it is proved that-

(i) the failure was occasioned by mistake or other good cause.

⁵ The Employment Relations Court ruled that the Employment Relations Tribunal had jurisdiction to hear workmen’s compensation claim up to \$40,000.

⁶ see *Ali v Westpac Banking Corporation* –HBA 006/23 and Bankruptcy Case 005/23

thereof”), and is tied with an offence creating provision in sub-section 14(3) of the Act.

- (ii) Sub-section 14(3) clarifies that the employer commits an offence and is liable to a fine for not complying with the notice requirement laid out in subsections 14(1) and (2). The relevant form to be used by the employer is L.D FORM C/1 which is prescribed in the Second Schedule of the *Workmen’s Compensation Regulations 1964*.

- 11. When viewed from the position outlined in sub-paragraph 10(i), the phrase ‘*unless the claim for compensation with respect to such accident has been made within three years from the occurrence of the accident causing the injury or, in the case of death within three years from the time of death,*’ in the second paragraph of section 13 of the Act, must refer to the claim for compensation. Contrary to what the Court held in *Nirmala Holdings* the claim for compensation is submitted by form, in this instance LD FORM C/2. This is confirmed by regulation 4 of the *Workmen’s Compensation Regulations*;

‘4. Where a workman has suffered an accident as a result whereof he has injured or has died and thereby he or his dependants (as the case may be), or some person on his or their behalf shall make any such claim in the form set out in the Third Schedule’(note underlined phrase)

It is a form driven system⁷ designed to simplify proceedings for parties as outlined in the *Workmen’s Compensation (Rules of Court) Regulations 1964*, and on the clear statutory prescription underlined in regulation 4 must mean that the finding of the Court in the earlier ruling of *Nirmala Holdings* that the notice of the claim to the employer of the accident cannot be equated as a claim for compensation, is wrong.

- 12. The position taken by the Court as outlined is borne out in the chronology of forms contained in the **Records of the Employment Tribunal** under the heading **Applicant’s Disclosures** ⁸

⁷ See regulation 4 of *Workmen’s Compensation (Rules of Court) Regulations 1964*-Court to assist parties in any proceeding under the Act on matters of form or procedure ...and supply to any such party who is not legally represented

⁸ **Pages 5-75 LD FORM C/1 p A1-A2; LD FORM C/2 p C1-C2**

Notice by Employer of Accident causing injury/death to a workman or death of a workman from any cause whatsoever	LD FORM C/1 dated 21 January 2017
Notice of Claim by on behalf of a Workman	LD FORM C/2 dated 2 February 2017.

13. The Court is of the view that `Form No 4 (*Workmen's Compensation (Rules of Court) Regulations – Notice to Respondent as to Application*) is for general application i.e, may be used by a party who desires the determination of any question arising out of accident in which compensation might be claimed. In the Court's view, it is a form that may be used to raise any matter by way of application *after* a claim has been filed using LD Form C/2. It may be used for an 'interlocutory' application to strike out, for example, or to admit partial liability. It may be used by *either* the workman⁹ or the employer¹⁰.
14. It is not designed for the singular purpose of initiating a claim for compensation against the workman as mistakenly utilized by the Labour Officer on 21 July 2021¹¹. The claim had already been initiated by that stage, with the lodgment of LD Form C/2 on 2 February 2017.
15. The Court's finding are summarized;
- (i) Contrary to the finding in *Nirmala Holdings trading as Ocean View Hotel v Labour Officer-ERCA 16 of 2016*, a notice of claim to the employer may be equated as a claim for compensation, if properly filled out on LD Form C/2, as clearly prescribed in regulation 4 of the *Workmen's Compensation Regulations 1964*
 - (ii) The claim for compensation had been initiated by the Labour Officer sending LD Form C/2 to the Human Resource Officer, South Pacific Waste Recyclers on 21 January 2017, not 21 July 2021 as the Employment Tribunal incorrectly found in its ruling delivered on 12 May 2023.

⁹ Regulation 11(1)(a)-(b)

¹⁰ Regulation 11(2)

¹¹ Tab 1- Records of the Employment

16. Given the finding of this Court that the claim for compensation was made properly on 21 January 2017, the finding of the Employment Tribunal on the application of section 13(b)(i) of the Act becomes unnecessary and for completion, dismissed.
17. Whilst the Appellant has succeeded in this appeal it is fitting that it bears costs of proceedings, for not attending the hearing.

FINDINGS

1. **The Ruling of the Employment Relations Tribunal delivered on 12 May 2023 be dismissed and set aside in its entirety;**
2. **Matter is reverted to the Employment Relations Tribunal for the hearing of the claim for compensation lodged on 21 January 2017.**
3. **Costs to the Respondent, summarily assessed at \$750.00, and to the Court, summarily assessed at \$750.00, both sums to be paid by the Appellant within 21 days of this Ruling.**



Savenaca Banuve
Savenaca Banuve
Judge

Dated at Suva this 19th day of November, 2025.