

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 482 OF 2008

MICHAEL GICHOBII GITURU.....PLAINTIFF

Versus

THE HON. THE ATTORNEY GENERAL.....DEFENDANT

RULING

I have in this suit been called upon to determine one short legal issue: whether or not the limitation period can be extended under the Limitation of Actions Act in matters of contract. A brief statement of the facts of the case will elucidate the issue. On 1st February 2005 the Plaintiff, then an Assistant Chief, was retired under the 50 rule. On 29th September 2008 he obtained leave from the chief Magistrate's Court at Nakuru to file a suit out of time and protest his retirement pursuant to that leave he filed this suit on 5th November 2008.

In his defence the Attorney General averred in paragraph 8 thereof that he would raise a preliminary objection on the competence of this suit as being incurably defective. At the hearing Mr. Kipkosgei, learned state counsel raised a preliminary objection that this suit is bad in law as it was filed 10 months after limitation period had expired. He dismissed

the Chief Magistrate's order extending time as of no consequence for two reasons. One, that under the Limitation of Actions Act, the limitation period cannot be extended in matters of contract. Two, that the Chief Magistrate's Court has no jurisdiction to enlarge time. In response Mr. Tollo for the Plaintiff, while admitting that indeed this suit was filed out of time submitted that time can be enlarged even in claims based on contract.

I have considered these rival submissions. **Section 27** of the **Limitation of Actions Act** is quite clear as to when the period for filing a suit can be enlarged: in actions founded on tort and only those relating to death or personal injury. Even in such case time can only be enlarged if the requirements of **Sub-section (2)** of that section are fulfilled. That sub-section requires the applicant to prove that the material facts, which must be facts of a decisive character, were at all material times outside the knowledge (actual or constructive) of the Applicant.

There is no provision in that section or any other for extension of time in actions founded on contract. Even in tort and where one is able to bring oneself within the provisions of **Section 27**, one must obtain leave from court to file a suit out of time. In the circumstances I agree with Mr. Kipkogei that the limitation period cannot be extended in matters of contract and a subordinate court has no jurisdiction to extend it even in actions founded in tort. This suit is therefore incompetent and I accordingly strike it out with costs.

DATED and delivered this 19th day of July 2011.

**D.K. MARAGA
JUDGE**