



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 5 of 2007**

**CLATUS ODHIAMBO MACOWENGA..... PLAINTIFF**

**VERSUS**

**KENYA CIVIL AVIATION AUTHORITY .....DEFENDANT**

**RULING**

The plaintiff's claim is for special damages for unlawful dismissal. The dismissal occurred on 6.1.2006 when the defendant by a letter of even date terminated the plaintiff's employment. As the contract was with the defendant, the provisions of the Civil Aviation Act Chapter 394 of the Laws of Kenya are pertinent. Section 7 E bars claims instituted after the expiry of 12 months from the date of the cause of action. The Section reads as follows:-

“7E

(a) the action or legal proceedings shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, omission or default complained of or in the case of a continuing injury or damage, within six months next after the cessation thereof.”

The plaintiff commenced this suit on 11.1.2007. He was therefore late by a mere 5 days. Can he get an extension as he seeks in this application? The provisions of the limitation of Actions Act Chapter 22 Laws of Kenya under which extension of time to file suit in certain actions may be made have not been imported into the Civil Aviation Act. In any event, under the Limitation of Actions Act extension is not available in actions that sound in breach of contract or a claim for damages for unlawful dismissal.

It would appear therefore that I have no jurisdiction to extend the time within which this suit was instituted. The statute governing the relationship between the plaintiff and the defendant does not provide for the extension of time after the lapse of the limitation period of 12 months. It is not a question of discretion. The period of delay is not a consideration. In the premises even though the delay involved in this case is about 5 days, there is no discretion the court could exercise to extend the period as sought.

I sympathize with the plaintiff but sympathy is not a consideration when the provisions of the statute are clear.

The application is dismissed with no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2007.**

**F. AZANGALALA**

**JUDGE**

**Read in the presence of:**

Otieno holding brief for Sijeny for the plaintiff.

**F. AZANGALALA**

**JUDGE**

**23/11/07**