

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

Misc Application 696 of 2004

TIMOTHY M. MUKALO APPLICANT

VERSUS

REUBEN ALUBALE SHIRAMBA 1ST RESPONDENT

JOSEPHINE BEETI SHILOSIO 2ND RESPONDENT

ZADOCK LIKONO 3RD RESPONDENT

ATTONERY GENERAL 4TH RESPONDENT

RULING

This is an application to file suit out of time and is brought under Sections 27 and 28 of the Limitation of Actions Act, Cap 22.

The suit is brought against the Attorney General on behalf of the Government of Kenya, and three other individuals, one of whom is described as a Chief in Lugari District. It is not clear who the other two individuals are and why they have been enjoined. It is apparent that the Plaintiff's claim is for special damages arising out of his unlawful dismissal from employment as Assistant Chief in Lugari District.

The cause of action arose on 25th January, 2001 when the applicant was dismissed from his employment with the Government of Kenya. He brought this application more than three years after the cause of action arose. His explanation for this delay is that his appeal to the Public Service Commission (PSC) in respect of his termination was, and still is, pending and that he wanted to await its outcome, but believes that the Public Service Commission is no longer interested.

Sections 27 and 28 of the Limitation of Actions Act relied upon by the applicant are inapplicable because this is not an action based in negligence. In any event, Section 3 (2) of the Public Authorities Limitation Act, Cap 39 prescribes a time limit of three years from the date of the cause of action for the filing of a suit against the Government of Kenya, arising out of an action in contract. The time limit for actions in tort is even less – 12 months from the date of the cause of action.

The reason cited in this application for not filing the suit in time is not good, and in any event does not constitute "disability" envisaged by Section 5 of Cap 39. In addition, the delay is inordinate, and accordingly, this application is dismissed.

Dated and delivered at Nairobi this 4th day of October, 2005.

ALNASHIR VISRAM

JUDGE