

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC. APPLICATION NO. 20 OF 2016

ANN WANJIKU MWANGI CLAIMANT

VERSUS

FAITH HOMES OF KENYARESPONDENT

Wangira Okoba for claimant/applicant

Makori Rioba for respondent

RULING

1. By an ex-parte originating summons the claimant/applicant seeks leave to file the suit out of time.
2. The applicant states that she was dismissed from employment on 11th May 2012 unlawfully and unfairly and she instructed M/s Wangira Okobe & Co. Advocates to file suit against the respondent in April 2013.
3. The suit ought to have been filed before expiry of three years which period expired on 11th May 2015 which is about 6 months out of time.
4. The applicant states that she is a poor, peasant farmer who is illiterate, sickly and indigent and had misplaced documents in support of the intended suit hence the delay. The documents were later traced and given to the advocate to file suit.
5. The Employment Act, No. 11 of 2007, under Section 90 provides

Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

6. The Act does not provide for extension of time. However, the section makes reference to the provisions of Section 4(1) of the limitation of Actions Act, Cap 22 of the Laws of Kenya which Act provides for a limitation period of 6 years for all cases based on contract.
7. From the attached memoranda of claim, the claimant seeks payment of various terminal benefits which are statutory in nature and are mandatory for the employer to pay if proved.
8. These claims in court's view constitute continuous injury within the meaning of Section 90 of the Employment Act 2007 cited above.
9. Accordingly the claim is not statute barred. The memorandum of claim should be duly signed by the claimant and it be deemed duly filed.

Dated and delivered at Nairobi this 10th day of February 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE