



**Kiambi v Nairobi City County Government (Miscellaneous Application
E262 of 2023) [2024] KEELRC 1132 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1132 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E262 OF 2023**

L NDOLO, J

MAY 2, 2024

BETWEEN

NAHASHON JONAH KIAMBI APPLICANT

AND

NAIROBI CITY COUNTY GOVERNMENT RESPONDENT

RULING

1. By his application dated 3rd October 2023, the Applicant seeks leave to file suit against the Respondent out of time.
2. The application is supported by the Applicant's affidavit and is based on the following grounds:
 - a. That the Applicant was an employee of the Nairobi City Council, from 1988 until 2011, when he received a suspension letter;
 - b. That the Applicant was charged in court in the year 2011 on allegations of conspiracy to defraud and stealing by servant;
 - c. That the Applicant appealed against the administrative action and the suspension was converted to interdiction, with effect from March 2013;
 - d. That the criminal case was heard, the Applicant acquitted and the interdiction lifted in May 2015;
 - e. That during the interdiction, the Respondent withheld the Applicant's salary and benefits;
 - f. That the Applicant tried to demand his salary from the County Secretary and the Head of County Public Service Board, without success;
 - g. That the requisite period for filing of proceedings has expired due to circumstances beyond the Applicant's control;



- h. That it is in the interest of justice that the order sought be granted.
3. The Respondent's response is contained in a replying affidavit sworn by its Acting Director of Civil Litigation, Boniface Waweru on 6th February 2024. He accuses the Applicant of inordinate delay and states that such a party is not deserving of the Court's discretion.
4. Although in its written submissions dated 7th March 2024, the Respondent alludes to discretion of the Court to extend time, the fact of the matter is that no such discretion exists for claims arising from employment. Section 90 of the *Employment Act* provides as follows:

90. Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act*, 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.

5. In its decision in *Beatrice Kabai Adagala v Postal Corporation of Kenya* [2015] eKLR the Court of Appeal stated as follows:

“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the *Employment Act* 2007 which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years. As this Court stated in the case of *Divecon Limited v Samani* [1995-1998] 1 EA P. 48, a decision relied on by Radido J in *Josephat Ndirangu v Henkel Chemicals (EA) Limited*, [2013] eKLR, the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of sections 27 and 28 of the *Limitation of Actions Act*.”

6. With the foregoing decision which is binding on this Court, there is nothing more to say. The Applicants' intended claim is statute barred and the Court has no power to extend time.
7. The application dated October 3, 2023 is therefore declined with an order that each party will bear their own costs.
8. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF MAY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Ng'ang'a h/b for Mr. Kanyi for the Applicant

Ms. Mackutwa for the Respondent

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