



**Onyango v Kipkembe Limited (Miscellaneous Application E011 of 2024)
[2024] KEELRC 13314 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13314 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
MISCELLANEOUS APPLICATION E011 OF 2024**

J RIKA, J

NOVEMBER 29, 2024

BETWEEN

NELLY ASHONG ONYANGO APPLICANT

AND

KIPKEMBE LIMITED RESPONDENT

RULING

1. In her application dated 15th November 2024, the applicant seeks an order for leave, to file her claim out of time.
2. The application is founded on her affidavit, sworn on 15th November 2024.
3. She states that she was employed by the Respondent as a Tea Tester, in May 1994.
4. Her contract was terminated by the Respondent unlawfully, on 8th October 2002.
5. She was not paid her statutory dues.
6. She explains that she suffered mental illness, and due to her illness and old age, was not able to institute the claim within time.

The Court Finds: -

7. The applicant left employment 22 years ago, in the year 2002.
8. She has not disclosed through her affidavit, when she regained her mental health, and her affidavit does not exhibit any medical records.
9. She seeks to have the 3-year period under Section 90 of the *Employment Act*, extended. The law on extension of statutory time limits, laid down by the Court of Appeal, is heavily stacked against her.



10. In *Rift Valley Railways [Kenya] Limited v Hawkins Wagunza Musonye & Another* [2016] eKLR, the Court of Appeal had this to say about extension of time under Section 90 of the *Employment Act*: -

“For us, it is clear from our reading of section 90 aforesaid, that there are no exceptions to the three-year limitation period, save for cases of continuing injury or damage where the action or proceedings must be brought within twelve months, after cessation thereof. This was not a case of continuing injury, but one of a single act of termination... where a statute limits time for bringing an action, no court has the power to extend time, unless the statute itself allows extension of time...”

11. The Court of Appeal went on to castigate the undersigned Judge, for having engaged in craft and innovation, by extending time to parties who had been engaged in negotiations, overstretching the 3-year limit under Section 90.
12. There is no need to keep the application herein pending in this Court, which would only give the applicant a false hope, that this Court is likely to reach a different outcome, from what was laid down by the Court of Appeal, in Wagunza Musonye decision.

It is ordered: -

- a. The application is declined.
- b. The file is closed.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT KERICHO, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020 THIS 29TH DAY OF NOVEMBER 2024.

JAMES RIKA

JUDGE

