



**Kieha v Konifaf Company Limited (Miscellaneous Application
270 of 2023) [2024] KEELRC 2743 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2743 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 270 OF 2023
L NDOLO, J
NOVEMBER 7, 2024
[FORMERLY HIGH COURT MISCELLANEOUS APPLICATION NO E924 OF 2023]**

BETWEEN

DAVID GIKANDU KIEHA APPLICANT

AND

KONIFAF COMPANY LIMITED RESPONDENT

RULING

1. By his application dated 27th September 2023, the Applicant seeks leave to file suit against the Respondent out of time. The application is supported by the Applicant’s own affidavit and is based on the grounds that:
 - a. The time for filing of the suit has lapsed;
 - b. Grant of leave is necessary;
 - c. There has not been inordinate delay in bringing the application.
2. In his affidavit in support of the application, the Applicant states that he worked for the Respondent between 2001 and 2012. He claims to have been arrested on 5th September 2012 and subsequently charged with the offence of stealing by servant. He adds that he was acquitted on 30th January 2014.
3. According to the Applicant, he reported to work on 8th September 2012 but found that he had been replaced. By the Applicant’s own admission, his claim is statute barred. The relevant provision in this regard is Section 90 of the [Employment Act](#), which states 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.

4. The question whether the Court can extend time in employment related claims has been decisively resolved by both this Court and the Court of Appeal. In Attorney General & another v Andrew Maina Githinji & another [2016] eKLR the Court of Appeal affirmed that Section 90 of the [Employment Act](#) does not leave any room for discretion to extend time in employment claims.
5. In light of this clear jurisprudence, there is nothing more to say. The application dated 27th September 2023 is without merit and is dismissed with no order for costs.
6. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF NOVEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Seda for the Applicant

No appearance for the Respondent

