



**Nyanjui v Safari Park Hotel (Cause E735 of 2022)
[2023] KEELRC 551 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 551 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E735 OF 2022
J RIKA, J
FEBRUARY 28, 2023**

BETWEEN

PETER NYANJUI CLAIMANT

AND

SAFARI PARK HOTEL RESPONDENT

RULING

1. The Claimant seeks in his Application dated October 12, 2022, leave to file his Claim out of time.
2. He was employed by the Respondent Hotel as a Barman, on November 19, 1987, and dismissed on February 11, 2003, on allegations of fraud.
3. He relies on his Affidavit, sworn on October 12, 2022, in which he explains that he was involved in a serious traffic accident in 2002, which left him bedridden. He also states that he has been nursing his wife who is of ill-health. He was denied by the Respondent terminal dues, which had negatively impacted his entire family.
4. The Application is opposed through the Replying Affidavit of B Inoti, Human Resource Manager of the Respondent. He informs the Court that the Application is in abuse of the process of the Court. The Claimant is a serial litigant who filed RMCC No 2308 of 2003 against the Respondent on the same subject matter. This Claim was dismissed with costs to the Respondent. He did not appeal against the decision. He instead initiated RMCC No 12144 of 2004 against the Respondent. This Claim was again dismissed for lack of merit. 7 years later, the Claimant filed CMCC No 1265 of 2018 against the Respondent, asking for leave to file Claim out of time. The Application was dismissed. The Claimant has filed the present Application against this background. The Respondent prays the Court to reject the Application for being in abuse of the process of the Court.
5. Parties agreed that the Application is considered and determined through Written Submissions.



The Court Finds: -

6. The Application is clearly in abuse of the process of the Court. The Claimant was summarily dismissed by the Respondent 20 years ago, on February 11, 2003. He did not file his Claim within 6 years allowed then, by the *Limitation of Actions Act*, on contractual disputes.
7. Whatever prevented him from filing the Claim, within the prescribed time, must have been argued by him, in the chain of actions he has instigated before various Courts, seeking extension of time. All these actions have ended in failure. Instead of filing new Applications, on the same subject, the Claimant ought to have tried his luck in a higher jurisdiction, on Appeal.
8. The law does not allow him to keep pestering the Respondent, on the same issue, unmindful of the principle of *res judicata*. The Claimant risks being declared a vexatious litigant, if he does not heed the successive rulings of the Courts, which have concluded his Claim is statute- barred. Declaration as a vexatious litigant would severely limit his ability to file any Claim before the Court. It is important that he understands this, and moves on from pursuit of his former Employer.
9. The Application, like its predecessors in the various Courts, is clearly in abuse of the process of the Court, and cannot be allowed.

It is ordered: -

- a. The Cause herein is in abuse of the process of the Court, and is struck out.
- b. This file shall be marked as closed.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH DAY OF FEBRUARY 2023.

JAMES RIKA

JUDGE

