



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Attorney General & another (Cause E1408 of 2018)
[2023] KEELRC 475 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 475 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1408 OF 2018
MN NDUMA, J
FEBRUARY 23, 2023**

BETWEEN

MICHAEL M MAINA CLAIMANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

**PERMANENT SECRETARY, OFFICE OF THE PRESIDENT, PROVINCIAL
ADMINISTRATION AND INTERNAL SECURITY 2ND RESPONDENT**

RULING

1. The respondent filed an *Ex parte* originating summons dated June 3, 2022 seeking an order in the following terms:-
 1. Let the respondent within 10 days of this summons on them enter appearance to this summons which is issued to the applicant who is seeking the following orders:-
 1. That leave be granted to the applicant Michael M Maina to file suit against the Attorney General as the Principal Adviser to the Government and the Permanent Secretary, Office of The President, Provincial Administration and Internal Security after the limitation period and filed before seeking Court's leave.
 2. That costs of the application be in the cause.
2. The application is premised on grounds set out on the face of the application and in the supporting affidavit of the applicant the nub of which is that the applicant filed suit on August 9, 2011 upon being dismissed from employment on May 28, 2007.
3. That upon dismissal, the applicant filed an internal appeal to the Ministry and the Ministry took time to make a decision.



4. That on December 3, 2020, the applicant's advocates issued a statutory notice to sue the government to which the 1st respondent responded to on December 16, 2010.
5. The advocates filed suit on August 9, 2021 without seeking leave to enlarge time as provided by the law.
6. That the delay was caused by reasons beyond the control of the applicant.
7. The application is opposed vide grounds of opposition filed by the respondent dated 18th July, 2022 which may be summarized that the application is an abuse of the Court process in that Section 27 and 28 of the Limitation of Actions Act do not contemplate nor provide for the Order sought in the application.
8. That equity aids the vigilant and not the indolent.
9. That the application be dismissed with costs.
10. From the facts discernable from the pleadings which facts are not in dispute, the suit was filed at the High Court by a plaint dated May 31, 2011 on July 21, 2011.
11. That Paragraph 5 of the plaint states that the plaintiff was wrongfully dismissed on May 28, 2007. The plaintiff seeks payment of terminal benefits and an award of General damages for the unlawful dismissal.
12. The cause of action arose on May 28, 2007 before the coming into force of the Employment Act, 2007 which came into effect in August, 2008.
13. By the time, the cause of action arose the applicable law on Limitation is the Limitation of Actions Act, Cap 22 Laws of Kenya, which permitted filing of claims emanating from an employment contract to be filed within six (6) years from the date the cause of action arose.
14. Accordingly, I find this application to have been filed without justification and has caused unnecessary delay in the prosecution of this matter.
15. The application is dismissed and the suit be heard on its merits on a priority basis. It is so ordered.

Dated and delivered at Nairobi (virtually) this 23rd day of February, 2023.

Mathews N

Judge

Appearance

Mr Ondieki for claimant

Mr/ Oure for Respondent

Ekale – Court Assistant

