



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

MISCELLANEOUS APPLICATION NO. E020 OF 2021

GEORGE AMOTH AND 14 OTHERS.....APPLICANTS

VERSUS

KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).....RESPONDENT

RULING

1. Before Court is a Notice of Motion Application dated 13th April, 2021 and filed in court on 14th April, 2021. The Applicants seek the following orders:

- a. That leave be granted to the Applicants to file/bring a petition/claim against the Respondent out of time.
- b. That a waiver of court fees be granted to the applicants in respect of the intended petition.
- c. Any other orders that the court may deem fit to grant.

2. The application is premised on the grounds on the face thereof and the supporting affidavit of George A. Oganga, the 1st Applicant herein. Mr. George A. Oganga deposes that he and his Co-Applicants were engaged as casual labourers by the Respondent on various dates between the years 1986 to 1993. It is their position that they were engaged on casual employment basis for a very long time, contrary to the law.

3. The Applicants further aver that they are not in a position to meet court fees attendant to filing the intended petition and seek that the court waives the filing fees.

4. The Respondent filed a replying affidavit in opposition to the application dated 8th November, 2021. It states that the Applicant's application is an abuse of the court process as it is both *res judica* and statute time barred.

5. The Respondent's assertion is that the Applicant filed ***Kisumu High Court Civil Suit No. 23 of 2013 George Amoth and 14 others v Kenya Medical Research Institute (KEMRI)***, claiming damages for unlawful casual engagement. The Respondent further avers that later on 13th April, 2015, the case was transferred to the Industrial Court and assigned a new number, being ***Kisumu ELRC Cause No. 110 of 2015***.

6. The Respondent states that it filed a Preliminary Objection in that suit seeking that the suit be struck off for being time barred. It states that the court upheld the Preliminary Objection and struck out the suit for having been filed out of time.

7. The Respondent deposes that the Applicants, yet again, filed another suit vide a claim dated 13th September, 2017 on the same subject matter, seeking similar reliefs and involving the same parties.

8. The Respondent again filed a notice of preliminary objection and the court delivered a ruling on 20th December, 2018, striking out the suit for lacking jurisdiction due to the statute of limitation.

9. Parties filed submissions in the matter and which have been duly considered.

10. The issues for determination are:

- a. Whether the application is time barred

b. Whether the application is *Re Judicata*

Whether the application is time barred

11. The issue of whether this matter is time limited has been addressed by a court of competent jurisdiction. Not once; but twice. In **Kisumu ELRC Cause No. 110 of 2015-George Amoth & 14 Others v Kenya Medical Research Institute**. Justice Maureen Onyango extensively addressed the issue, while ruling on a similar Preliminary Objection raised by the Respondent and proceeded to strike out the claim on the basis that it was time barred and that the court lacked jurisdiction to expand time.

12. The application before this court seeks that the court extends time to allow the Applicants lodge their petition/claim. The question of the whether the court has power to expand time was equally addressed in the earlier suit filed by the Applicants herein.

13. The court in determining the issue, relied on the holding of the Court of Appeal in the case of **Mary Osundwa v Nzoia Sugar Company Limited (2002) eKLR**, where the court held that Section 27 of the Limitation of Actions Act, does not give the court jurisdiction to extend time to file suit out of time, in cases involving contracts or any other cause of action other than those on tort.

14. The Applicants herein, seek that the court expands time to allow them file suit. The court returns that it lacks jurisdiction to grant this prayer.

Whether the application is *Re Judicata*

15. The Applicants herein filed **Kisumu ELRC Cause No. 110 of 2015-George Amoth & 14 Others v Kenya Medical Research Institute**, seeking damages for unlawful engagement as casual labourers. Although the instant application was filed by the same Applicants as against the same Respondent, the issue in the instant application is solely extension of time and in my view the application is not res Judicata as the prayer is different from those in earlier suits.

16. This court has however already found that it has no power to expand time to enable the Applicants lodge their petition/claim out of time. For this singular reason, the application lacks merit and is dismissed.

17. I make no orders as to costs.

18. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 27TH DAY OF JANUARY, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Oganga and Mr. Omedi present in person

Ms. Kipkesei present for the Respondent

Ms. Christine Omollo –C/A