



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

ELRC MISC NO.E1 OF 2020

(Before D.K.N.Marete)

SALESIUS NJERU GABRIEL.....CLAIMANT

VERSUS

DEDAN KIMATHI UNIVERSITY OF TECHNOLOGY.....RESPONDENT

RULING

This is an application dated 5th October, 2020 and comes out as follows;

1. *That the Honourable Court be pleased to grant leave for the applicant to file a claim out of time against DEDAN KIMATHI UNIVERSITY OF TECHNOLOGY the intended respondent.*
2. *That the costs of this Application be provided for.*

It is grounded as follows;

- a) *That the Applicant is desirous of filing a claim against the intended respondent for wrongful termination and for terminal dues which the respondent has refused to pay since year 2012.*
- b) *That the Applicant has since the time his employment was terminated been pursuing his claim for terminal dues as well as unlawful termination but it has now become clear that the Respondent has only taken him in circles without any intention to settle the same. Time for filing the claim has lapsed in the process to the detriment of the applicant.*
- c) *That the intended claim raised triable issues with high chance of success.*
- d) *That this application has been brought at the earliest opportunity after the applicant learnt that the intended respondent was taking him in rounds and that time for filing had lapsed.*
- e) *That this Honourable Court has powers to exercise discretion for ends of justice to be met.*
- f) *That no prejudice will be occasioned to the intended respondent seeing that it is still holding on to the money meant for applicant's terminal dues.*

This application is ex-parte in nature. It does not, at the onset, involve the Respondent.

The application seeks leave to institute a suit against the Respondent out of time. It is the applicant's argument, case and submission that he was not able to file it on time because all this time, he was involved in a protracted conciliation process with the Respondent.

The process of conciliation was so convoluted so as to lead in expiry of time for filing of the claim. This has now resulted in the current application for leave to file the claim out of time.

This application flies against Section 90 of the Employment Act, 2007 which comes out as follows;

“Notwithstanding the provisions of section 4 (1) of the Limitation of Actions Act (Cap.22), 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.”

The letter of termination of contract for the Applicant is dated 1st March, 2012. He did not take any prior action in relation to the termination within the stipulated time frame of the law. This application is therefore not sustainable or viable in the circumstances. It fails from the onset.

I am therefore inclined to dismiss the application with orders that the Applicant bears his costs of the application.

Dated and delivered at Nyeri this 16th day of June, 2021.

D.K.Njagi Marete

JUDGE

Appearances

- 1. Mr.Kimunya instructed by Kimunya and Co.Advocates for the ex-parte Claimant/Applicant.**
- 2. No appearance for the Respondent.**