



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MALINDI**  
**MISCELLANEOUS APPLICATION NO E002 OF 2021**  
**GALGALO JARSO JILLO.....APPLICANT**  
**VS**  
**NATIONAL BANK OF KENYA LIMITED.....RESPONDENT**

**RULING**

1. What is before the Court is the Applicant's Notice of Motion dated 16<sup>th</sup> February 2021, by which he seeks leave to file a claim against the Respondent, out of time.

2. The Motion is supported by the Applicant's own affidavit and is based on the following grounds:

- a. That the Applicant was an employee of the Respondent herein, having been employed as Branch Manager, Garissa vide letter dated 14<sup>th</sup> June 2013;
- b. That the Applicant's employment was wrongfully and unfairly terminated in mysterious circumstances;
- c. That the delay in filing the claim was caused by the pendency of *Garissa Criminal Case No 56 of 2014: Republic v Galgalo Jarso Jillo & 2 others*, which dragged in court for more than five (5) years, before it was concluded on 14<sup>th</sup> June 2019, the outcome being the Applicant's acquittal;
- d. That having been unlawfully dismissed from his employment and having a pending criminal case, the Applicant was financially constrained and was not able to file his claim within the required period;
- e. That the delay in bringing the claim is excusable and is not inordinate;
- f. That it is in the interest of justice that the order sought is granted to allow the Applicant to prosecute his claim against the Respondent;
- g. That the Respondent will not be prejudiced if the order sought herein is granted.

3. The Respondent opposed the Applicant's plea by a replying affidavit sworn by Samuel W. Mundia on 12<sup>th</sup> March 2021 and the parties filed written submissions in support of their respective positions.

4. Section 90 of the Employment Act provides 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.**

5. The fundamental question for determination in this Motion is whether the Court has power to extend time under the foregoing provision. In many decisions, the Court of Appeal has consistently held that the Court has no such power. In *Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR* the Appellate Court stated:

**“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the Employment Act 2007 which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years. As this Court stated in the case of Divecon Limited –vs- Samani [1995-1998] 1 EA P. 48, a decision relied on by Radido J in Josephat Ndirangu –vs- Henkel Chemicals (EA) Limited, [2013] eKLR, the limitation period is never extended in matters based on contract. The period can only be extended in *claims founded on tort and only when the applicant satisfies the requirements of Sections 27 and 28 of the Limitation of Actions Act.*”**

6. I do not need say more. If the hands of the Court of Appeal were bound by the law, mine are doubly bound not just by the law but also by the doctrine of *stare decisis*.

7. In the result, the Applicant’s Notice of Motion dated 16<sup>th</sup> February 2021 is declined.

8. In light of the Applicant’s predicament, I will lighten his burden by directing that each party will bear their own costs.

9. It is so ordered.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 29<sup>TH</sup> DAY JULY 2021**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Miss Mulwa for the Applicant

Mr. Omondi for the Respondent