



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KERICHO

MIS. CAUSE. NO. 1 OF 2019

CAROLYNE CHEPKOECH.....APPLICANT

VERSUS

TIRGAGA TEA FACTORY COMPANY LIMITED.....RESPONDENT

RULING

1. This ruling relates to the Originating Summons dated 10.5.2019 brought under Section 26 of Limitation of Actions Act, Order 37 Rule 1(a)& (g) of the Civil Procedure Rules and section 3A & 63 (e) of the Civil Procedure Act and Article 159(1) of the Constitution of Kenya. The application seeks the following orders:

- a) The court be pleased to grant leave to the applicant to bring suit against the respondent out of time.***
- b) The Statement of Claim filed herein be deemed as duly filed and served upon payment of the requisite fees.***
- c) The costs of the application be in the cause.***

2. The application is supported by the affidavit sworn by the applicant on 10.5.2019 in which she admits that her employment contract was terminated on 29.9.2012. The application ought to have been ex-parte but the respondent was served and proceeded to file grounds of opposition to the application contending that the court lacks both the jurisdiction and discretion to grant the leave sought. Further, the respondent contends that the applicant has not demonstrated any plausible reason for the delay in filing suit within time.

3. Having carefully considered the material presented by the two sides, the issues for determination are whether the court has jurisdiction to extend the time for filing suits founded on contract of employment, and if so, whether the applicant herein has laid any basis for granting the leave sought.

4. The relevant law in this matter is Section 90 of the Employment Act which provides that:

“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 cause of action herein arose on 29.9.2012 and since then, 9 years have lapsed. The legislature in its wisdom intended by the above provision to bar any person from commencing civil claims founded on employment contract after the lapse of three years from the date when the cause of action arose. Consequently, the court is deprived of discretion to enlarge the time beyond the 3 years period provided under section 90 of the Employment Act.

6. I gather support from **Beatrice Kahai Adagala v The Postal Corporation of Kenya [2015] eKLR** where the Court of Appeal held that:

“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 three 3 years. As the court stated in Divecon Limited vs Samani [1995-1998] 1 EA p. 48 ... the limitation period is never extended in matters based on contract.”

7. In consideration of the said mandatory provision and the above binding precedent, I find and hold that the court lacks jurisdiction to grant

the leave sought by the applicant. Consequently, I dismiss the application dated 10.5.2019 but with no costs because the application ought to have been considered ex-parte.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF NOVEMBER, 2021.

ONESMUS N. MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE