



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**MISCELLANEOUS APPLICATION NO. 48 OF 2019**

**(Before Hon. Justice Mathews N. Nduma)**

**HENRY OMUKOTO.....APPLICANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**RULING**

1. The ex parte application dated 7<sup>th</sup> October 2019 and listed on 17<sup>th</sup> October 2019 seeks an order that the time for filing suit against the respondent be enlarged and the applicant be allowed to file suit out of time.
2. The draft memorandum of claim is attached to the application. In terms of the supporting affidavit by the applicant, the applicant deposed that he filed suit before Kakamega CMCC Court in Civil Case No. 204 of 2000 and judgment was delivered on 25<sup>th</sup> March 2015 in which the trial magistrate stated that some of the claims in the suit ought to have been filed before the E&LRC. That since 2015, the applicant has been sick and was unable to file suit before E&LRC immediately. That the applicant is in good health and he be allowed to file suit now.
3. According to the applicant, he was employed by the respondent as a teacher until he resigned from employment on 18<sup>th</sup> June 1997. The claimant was reinstated in a period of two years and the reinstatement was subsequently revoked.
4. That suit was heard and determined by the Chief Magistrate Shitubi in a judgment dated 25<sup>th</sup> March 2015. The trial magistrate awarded the claimant Kshs. 120,000 in respect of admitted underpayments. All the other reliefs sought were dismissed for various reasons including general damages for unlawful dismissal; unpaid salary; unpaid leave and salary in lieu of notice for lack of jurisdiction since the claim ought to have been filed before E&LRC. Even at the time, the matter was before the Magistrate court, the suit in respect of the said reliefs was time barred.
5. That suit had been filed in the year 2000 as CMCC at Kakamega, no. 204 of 2000. The applicant is trying to get a second bite on the cherry some twenty (20) years later.
6. This application lacks merit because no court has authority to extend time in which to file a suit founded on contract in terms of the Court of Appeal decision in Devicon case.
7. Before the enactment of the Employment Act, 2007, the limitation period for the suit was six years but became 3 years in terms of Section 90 of the Employment Act, 2007.
8. Furthermore, having considered the judgment of the Chief Magistrate, the suit is also resjudicata because the court considered matters emanating from the dismissal of the claimant in the judgment and proceeded to grant part of the relief sought by the plaintiff.
9. This finding is in addition to the finding that the court lacks jurisdiction to grant this application and the same is dismissed with no order as to costs.

**Ruling Dated, Signed and delivered this 10<sup>th</sup> day of March, 2020**

**Mathews N. Nduma**

**Judge**

**Appearances**

Applicant in person.

Chrispo – Court Clerk