



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 202 OF 2020

CONVINE OMONDI NYAMWEYA.....APPLICANT

v

GEOTHERMAL DEVELOPMENT CO LTD.....RESPONDENT

RULING

1. Convine Omondi Nyamweya (applicant) was dismissed from employment on 13 April 2017 by Geothermal Development Co. Ltd (Respondent).
2. In terms of section 90 of the Employment Act, 2007, the applicant had 3 years within which to institute legal proceedings to challenge the dismissal.
3. On 9 June 2020, the applicant filed this application seeking orders
 1. ...
 2. **THAT** this Honourable Court be pleased to grant the applicant leave to file suit out of time against the Respondent.
 3. **THAT** the Memorandum of Claim annexed hereto be deemed to have been filed within the limitation period.
 4. **THAT** costs of this application be provided for.
4. The Respondent filed on 17 August 2020 a replying affidavit in opposition to the application.
5. Pursuant to directions issued by the Court, the applicant filed submissions on 7 September 2020 while the Respondent filed its submissions on 18 September 2020.
6. The Court has considered the Summons, affidavits and submissions.
7. The primary ground advanced in support of the application was that upon a declaration of the COVID-19 public health pandemic, the Honourable Chief Justice, on 17 March 2020 directed parties to utilise electronic platforms to access the Courts and that the applicant sent the pleadings electronically to the Deputy Registrar through email on 14 April 2020 but an assessment was only made on 11 May 2020, long after the expiry of the prescribed time.
8. Among the documents attached to support the assertions was an email sent to elrcnairobipleadings@gmail.com requesting for the filing and enclosing copies of Statement of Claim, Verifying Affidavit and List of witnesses.
9. Also filed in support of the application was a reminder email to the Court Registry on 8 May 2020 seeking feedback on assessment of Court fees.
10. In his submissions, the applicant submitted that what he was seeking was a validation of the Statement of Claim which was sent to the Court electronically within time but whose assessment of fees payable was delayed by the Court but had eventually been paid on 11 May 2020.
11. The Respondent on its part opposed the application as being without merit, defective and an abuse of the Court's time.
12. Although the applicant has sought for leave to file suit out of time (case law affirms that the Court has no power to grant leave and/or

extend time, see *Divecon v Samani* (1995 -1998) EA 48; *Kenya Airports Authority v Shadrack Abraham Kisongochi* (2016) eKLR and *Attorney General & Ar vs Andrew Maina Githinji & Ar* (2016) eKLR), this Court finds that because the applicant submitted his pleadings within time, he cannot be blamed for the delay or failure by the Court to timeously assess the fee payable.

13. The Court would therefore agree with the submission that this is more a question of validation or *deeming* as having been filed on time rather than an extension of time and/or grant of leave.

14. In lieu of the orders sought by the applicant, the Court orders that

(a) The Statement of Claim and accompanying documents are hereby deemed as having been filed on 14 April 2020, the assessed fees having been paid on 11 May 2020.

(b) Costs in the cause.

Delivered through Microsoft teams, dated and signed in Nairobi on this 16th day of October 2020.

Radido Stephen

Judge

Appearances

For applicant Mr. Kalume instructed by Owino & Co. Advocates

For Respondent Beatrice Kosgei, Advocate, Geothermal Development Corporation

Court Assistant Lindsey