



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

MISC NO 6 OF 2020

SAMUEL KIPCHIRCHIR ROTICH.....CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

R U L I N G

1. By an ex parte originating summons dated 16th July,220 the applicant sought leave of Court to file a suit against the respondent out of time. The application was brought on the grounds among others that the delay to file suit was occasioned by the applicant's ill-health triggered by the actions of the respondent who unfairly terminated his employment and delay in receiving necessary documents from the former head teacher. The applicant further in the affidavit in support of the application deponed that owing to the manner and in which the respondent terminated his service he got affected mentally and was admitted at Kabarnet District Hospital and treated for quite some time. The applicant attached medical treatment notes to support this.

2. The law on limitation of actions unfortunately does not support extension of time for claims founded on contract once the period within which to file the suit has lapsed employment relations is contractual and unlike ordinary contracts where the period is six years, actions founded on employment contract must be brought within 3 years after the accrual of the cause of action.

3. Section 90 of the Employment Act is couched in mandatory terms and does not allow room for exercise of discretion by the Court no mater how genuine and reasonable the grounds for delay in filing suit are.

4. Unless and until the law is amended, the Court's hand are tied hence an application to Court to file a suit founded on the Act is contract of employment once time has lapsed is bound to fail no matter how merited the grounds for the delay are.

5. The application is therefore dismissed with no order as to costs.

6. It is so ordered.

Dated at Eldoret this 6th day of November 2020

Abuodha Jorum Nelson

Judge

Delivered this 6th day of November 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge