



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NO 2366 OF 2017**

**JULIA WANGECHI KARIUKI Suing as the administrator of the Estate of  
SAMUEL NDUNG’U KARIUKI (DECEASED).....CLAIMANT**

**VERSUS**

**ARMED FORCES CANTEEN ORGANIZATION.....RESPONDENT**

**RULING**

1. By application dated 8<sup>th</sup> September, 2017 the applicant sought leave of court to file a suit out of time. In his submissions in support of the application, Mr Mbaluka for the applicant stated among others that the claimant obtained letters of administration in 2008. The claimant subsequently filed a suit on behalf of the stated Samuel Ndung’u Kariuki being CMCC No. 5577 of 2010 seeking the deceased’s terminal benefits.
2. The suit was part heard as the claimant’s witnesses had testified but when the matter proceeded to defence hearing on 10<sup>th</sup> August, 2016 the respondent filed a preliminary objection stating that the suit was statute barred by virtue of section 4(1) (a) of Limitation of Actions Act. That court through its ruling delivered on 8<sup>th</sup> March, 2017 allowed the preliminary objection stating the court had no jurisdiction.
3. From the foregoing it would seem that the issue of limitation had been raised before the subordinate court and upheld by the court. This court as a superior court can therefore only entertain the matter by way appeal from the decision of the subordinate court. The filing of a new application therefore is an abuse of the court process.
4. Section 4(1) (a) of the Limitation of Action Act then as relates to contracts and section 90 of the Employment Act now more specific to employment contracts provides that no claim based on the Act or employment contract generally shall be brought after the expiry of three years from the date of accrual of the cause of action. The section is couched in mandatory terms hence the court does not have jurisdiction to extend time once the same has lapsed.
5. The application dated 8<sup>th</sup> September, 2017 is therefore found without merit and is hereby dismissed with no order as to costs.
6. It is so ordered.

Dated at Nairobi this 18<sup>th</sup> day of January 2019

**Abuodha J. N.**

**Judge**

**Delivered this 18<sup>th</sup> day of January, 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

..... for the claimant

..... for the Respondent

**Abuodha J. N.**

**Judge**