



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

MISC. APPL. NO.164 OF 2018

[formerly Nakuru High Court Civil Suit No.80 of 2014 (OS)]

ROBERT MWISANI LUMADEDE..... APPLICANT

VERSUS

THE HON. ATTORNEY GENERALRESPONDENT

RULING

By Notice of Motion dated 11th December, 2018 the applicant, Robert Mwisani Lumadede is seeking for a review of the following orders;

This court be pleased to Order review of this ruling (Nakuru CMS 140 of 2012) (High Court 80 of 2014 and ELRC 164 of 2018) to employment and labour relations court for review of ruling hearing and determination. Hence in the judgement ruling declared suit application was out of times. My request is that other enabling provisions had granted additional time when applying, its my humble request.

The application seeking review is based o the grounds that on 22nd November, 2018 the court delivered ruling dismissing the application seeking for time extension to file an employment and labour relations claim and noting the same is filed out of time but failed to appreciate that Misc.140 of 2014 and CMS 80 of 2014 had been filed. That the court should order for the production of file No.140 of 2014 from the Chief Magistrate's court which file had moved from such court to the High Court.

Other grounds are that the application f transfer from the Chief Magistrates Court to the High Court was an act of negligence of duty and also the information of deployment from the Housign to Water is a misinformed statement and the applicant has never been deployed and worked with Ministry of Water only. Upon promotion from construction to store/procurement the problem became that of difference in salary paid and unpaid salary.

The matters which arose to the applicant relates to negligence from some government organs and persons who owed him a duty of care when the matter was addressed at the Ministry of Justice and Constitutional Affairs and by a State Council from the year 2009 to 2011 which wasted his time.

The applicant has filed his supprotign affidavit.

An application for review of court orders, ruling or judgement should be premised on the provisions of section 16 of the Employment and Labour Relations Court Act, 2011;

16. Review of orders of the Court The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules.

Under the referenced Rules, under Rule 33(1) of the Employment and Laboru Relations Court (Procedrue) Rules, 2016 provides for review orders in the following instances;

33(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

a. if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

- b. on account of some mistake or error apparent on the face of the record;
- c. if the judgment or ruling requires clarification; or
- d. for any other sufficient reason.

There must be discovery of new and important matter, some mistake or need for clarification or a sufficient cause set out to warrant and justify the application for the review of orders of the court.

The applicant herein has applied on the grounds that in his case the court failed to appreciate that there was *Nakuru CMS 140 of 2012* and *High Court 80 of 2014* before filing *ELRC 164 of 2018*, the current cause with the court. The gist of the matters filed with the Chief Magistrates Court and the High Court though not explained, the Ruling subject for review is the one dated and delivered on 22nd November, 2018 and which concerned an application seeking for extension of time to file a claim with the court for an employment and labour relations matter. Such application has since addressed the subject of it and particularly the binding provisions of section 90 of the Employment Act, 2007.

The court is denied the power, discretion and the leeway to extend time. All claims relating to employment and labour relations must be lodged with the court within the prescribed time. The position prevailing since **Divecon versus Samani [1995-1998] 1 EA 48** has not changed;

“No one shall have the right to power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action. A perusal of Part III shows that its provisions do not apply to actions based on contract.”

The above position is reaffirmed by the Court of Appeal in the case of **Beatrice Kahai Adagala versus Postal Corporation of Kenya [2015] eKLR** held as follows;

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 3 years. As this Court stated in the case of **Divecon Limited -vs- Samani [1995-1998] 1 EA P.48**, a decision relied upon by Radido, J. in **Josephat Ndirangu - vs - Henkel Chemicals (EA) Limited, [2013] eKLR**, the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of **Sections 27 and 28** of the Limitation of Actions Act.

Whatever matter the applicant may have addressed under *Nakuru CMS 140 of 2012* and *High Court 80 of 2014* for him to make application as herein and seeking for time extension to file an employment claim which is over 6 years old or 3 years old under the provisions of the Employment Act Cap 226 and Employment Act, 2007 cannot be cured by any innovation, device or craft.

In this regard, the court finds no good cause to warrant any review of the ruling delivered on 22nd November, 2018. Application dated 11th December, 2018 is hereby dismissed. No orders to costs.

Delivered at Nakuru this 7th day of February, 2019.

M. MBARU

JUDGE

In the presence of: