

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC APP 11 OF 2016

GEOFFREY MUDANYA.....APPLICANT

VERSUS

MUTHAIGA GOLF CLUB.....RESPONDENT

RULING

1. By an originating motion filed on 5th February, 2016 the applicant sought leave to file a suit out of time. The application was brought on the grounds among others that on 10th June, 2003, the applicant was unlawfully terminated by the respondent and that the suit could not be filed within time because of the intervention of his union KUDHEIHA who initiated the process through a letter dated 16th December, 2004. After the union was unable to reach an agreement with the respondent, the matter was referred to the Ministry of Labour for conciliation.

2. The Ministry of Labour after consideration of both parties submissions made its findings and recommendations dated 16th August, 2009 which were received by the union on 9th September, 2009. The Ministry of Labour recommended that the claimant be paid all his dues as per the CBA. The applicant further stated that his file was held by the law firm of Bower Mahiu & Co from the period between the year 2012 to 11th February, 2015 since the applicant was unable to raise the fees required.

3. Section 90 of the Employment Act does not seem to yield an interpretation that a suit can be filed once the time set by the section has lapsed. Conciliation in this matter was concluded by the Ministry of Labour on 16th April, 2009. How the claimants file moved from the union, who was handling the matter on his behalf to the law firm of Mahihu & Co Advocates who he claimed held the file until 2015 because he could not raise the requisite fee is not understandable.

4. It is unfortunate that section 90 of the Act does not allow for extension of time once it has lapsed. The courts' hands are therefore tied and the application inevitably fails and is hereby dismissed with no order as to costs.

5. It is so ordered.

Dated at Nairobi this 6th day of July, 2018

Abuodha Jorum Nelson

Judge

Delivered this 6th day of July, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent