



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 1003 OF 2017

GEDION OMUNYIN AJA.....CLAIMANT

VERSUS

INTERNATIONAL COMMITTEE OF RED CROSS.....RESPONDENT

RULING

1. On 6th June 2017, I directed that the applicant addresses the court by way of written submissions why he thought this matter is an exception to the express provisions of section 90 of the Employment Act.

2. The applicant in his written submission contends that whereas section 90 of the Employment Act provides that claims under the Act must be made within 3 years, the court has discretionary power to extend the time to file the claim given that the claimant had a good reason. Counsel further submitted the court is guided by article 159(d) of constitution which provided that justice shall be administered without undue regard to procedural technicalities. The technicality here being the adherence to strict timelines as provided under section 90 of the Employment Act that an employment related matter should be filed within three years.

3. According to counsel the reason the claimant took more than three years was because his case was dependent on the outcome of his criminal case and further that when he issued a demand letter the respondent through their advocate responded asking him to hold and give room for negotiations.

4. Section 90 of the Act provides as follows:

“Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act, no civil action or proceedings based on or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained of or in the case of continuing injury or damage within twelve months next after cessation thereof”

5. The provisions of this section are couched in mandatory terms hence do not seem to allow the court to exercise any discretion once a matter governed by the section has failed to meet the set timelines. In any event, even under the Limitation of Actions Act the only claim arising out of tort can be filed out of time with leave of court. Contractual claims are set at six years with no option for extension. By parity of reasoning, employment relationship being contractual extension of time once lapsed seems not permissible.

6. The courts hands are therefore filed in the matter and cannot extend time once it has lapsed. The application is therefore dismissed.

7. It is so ordered.

Dated at Nairobi this 6th day of July, 2018

Abuodha J. N.

Judge

Delivered this 6th day of July, 2018

Abuodha J. N.

Judge

In the presence of:-

..... for the Claimant

..... for the Respondent