

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

MISC CAUSE NO 105 OF 2017

KENNEDY MULI.....CLAIMANT

VERSUS

PAPER CONVERTERS (K) LIMITED.....RESPONDENT

RULING

1. By a Motion dated 29th August, 2017 the applicant sought leave of the court to file a suit out of time. The application was based on the grounds that the applicant was employed in 1992 and worked until 2010 when the respondent dismissed him. He consequently instructed the firm of Isoe & Nyakua Advocates to take up the matter and represent him.
2. His wife subsequently fell ill in January, 2011 and he had to travel to his rural home to look after her. He however kept following the matter on telephone with the law firm who assured him that the case had been filed and only a hearing date was remaining to be fixed. The applicant however later on came to learn that the matter was never filed in court.
3. The court has ruled severally that the wording of Section 90 of the Employment Act does not appear to grant a Judge the discretion to extend time once the period set by the section has lapsed. Further section 4(1) of the Limitation of Action Act which is the precursor to the section only permits extension of time under section 27 of the Act in respect of actions founded on tort. Actions based on contract must be filed within six years from the date of accrual of cause of action with no room for extension.
4. This period was shortened to three years in respect of claims founded on the Employment Act or contract of employment generally. The application presents an unfortunate case of professional misconduct on the part of the firm of Isoe & Nyakua Advocates for which the applicant should consider lodging a complaint against the law firm with the relevant professional disciplinary body. In law however the Court's hands are tied hence the orders sought cannot be granted.
5. The application is therefore dismissed with costs.
6. It is ordered.

Dated at Nairobi this 6th day of July, 2018

ABUODHA J. N.

JUDGE

Delivered at Nairobi this 6th day of July, 2018

ABUODHA J. N.

JUDGE

In the presence of:-

.....for the Claimant

.....for the Respondent