



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 GENERAL.....RESPONDENT

RULING

The applicant by application and Originating Summons dated 19th November, 2014 is seeking for orders that that the court do allow him to extend time to enable him file suit claiming damages for loss of earning for the new grade promoted to resulting to earl retirement.

The application is made on the grounds and supporting affidavit of the applicant that on 8th June, 2006 the Ministry of Housing wrote a memo stating that there would be a deployment of some officers to different government offices and following this memo he was deployed to the Ministry of Water in a junior position. the applicant made a complaint and there was a promise to have the matter addressed but instead proceeded to retire him from service.

The applicant claims to have suffered loss and damage as a result of the early retirement. The suit was not filed in good time as the respondent failed to respond in good time to all complaints made. There is a good claim with high chances of success and once allowed to file suit out of time, the claim shall be placed on the record.

The application is ordinarily *ex parte* though in this case the respondent was served and entered appearance. There was however no attendance for hearing.

The matter before court is premised on employment and labour relations where the applicant asserts that he was retired early from his employment with the Ministry of Housing and has suffered loss and damage which he would like to address. The applicant is however out of time as the cause of action arose vide letter of 8th June, 2006 and the subsequent transfer to the ministry where he was retired.

Employment regulation in the year 206 was under the repealed Employment Act Cap 226 Law of Kenya. The claims for loss and damage arising from a contract of employment and applicable time is therefrom addressed under the Limitation ofn Actions Act. such a claim ought to have been filed within six (6) years from the date when the cause of action arose.

From June, 2006 the applicant had until June, 2012 to file claim. The explanation as to why he was not able to file suit is that the respondent failed to respond to his complaints in good time. However this was not the respondent's case, it was the applicant to move the court with his claims and assert his rights, if any.

Time starts to run from the date of termination of employment and such determines when the time begins to run for purposes of time limitations as held in the case of

Gerald Muli Kiilu versus Barclays Bank of Kenya Limited [2016] eKLR.

See the court ruling in the case of **Nakuru Misc. Application No.12 of 2018 John Kipsang Mutai versus Teachers Service Commission.** The Court of Appeal in **Josephat Ndirangu versus Henkel Chemicals (EA) Limited, [2013] eKLR,** and held that;

- 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.

Such sections 27 and 28 of the Limitation of Actions Act requires an applicant to demonstrate what disability existed as to make it impossible to file suit within the limitation period. In this case, tthis is a matter based on contract of employment and thus not covered for matters subject to extension of time and even if it were, the explanation that the respondent failed to respond to the applicant in good time is not a disability sufficient to explain the inaction.

For the reasons above, the court is denied the power and authority to extend time for the applicant to file his claim arising from his employment contract out of time. Application is dismissed. No orders to costs.

Dated and delivered in open court at Nakuru this 22nd of November, 2018.

M. MBARU

JUDGE

In the presence of: