



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

MISC. APPLICATION NO. 6 OF 2016

(Before D. K. N. Marete)

KIPKEMOI STANLEY CHERUIYOT.....APPLICANT

VERSUS

THE CHAIRMAN.....1ST RESPONDENT

THE SECRETARY.....2ND RESPONDENT

THE TREASURER.....3RD RESPONDENT

B.O.G SIGOR HIGH SCHOOL

RULING

This is an application by way of Chamber Summons dated 18th October, 2016 and seeks the following orders of court:-

1. *That the applicant/plaintiff be allowed to file a suit against the respondents/defendants out of time as the cause of action arose away back 1993.*
2. *That this application to be dispensed with in the first instance.*
3. *Pending the respondents bear the cost of this application.*

It is based on the following grounds;

- a) *That the filing of the suit was delayed due to the communication between the applicant and respondents and the applicant was trying to reach agreement with the respondents amicably.*
- b) *That the applicant will suffer irreparable loss and damages if this application is not allowed.*
- c) *That the applicant seeking order for leave to file the suit out of time.*

The application, coming *ex-parte* is supported by the supporting affidavit of Kipkemoi Stanley Cheruiyot sworn on 18th October, 2016. In this he recites his case of employment by the respondents which was frustrated by a breach of contract on 3rd July, 1983. The applicant has in the meantime engaged the respondent in attempts to resolve the issues without success. This is the causative of his inability to file

suit on time and therefore this application for extension of time.

This court's hands are tied by the authority of **Rift Valley Railways (Kenya) Ltd. Vs. Hawkins Wagunza Musonye and Desideriy Tyson Otieno** where the Court of Appeal sitting at Malindi in the reliance on the authority of **Divecon v Samani (1995-1998) I EA 48 at p. 54** observed as follows;

“No one shall have the right or 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.”

This would sail nicely with the current Section 90 of the Employment Act, 2007 which limits time for institutions of suits in this sector to three years.

This application must therefore fail. I am inclined to dismiss it for the foregoing reasons.

Delivered, dated and signed this **31st day of January 2017**.

D.K.Njagi Marete

JUDGE

Appearances

1. Claimant in person.