



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

MISCELLANEOUS APPLICATION NO 24 OF 2016

KALEB KARIBA.....APPLICANT

VS

KENYA DEPOSIT INSURANCE CORPORATION.....RESPONDENT

RULING

1. The Applicant's application brought by Notice of Motion dated 8th March 2016 is for leave to file suit out of time.
2. In his supporting affidavit sworn on 8th November 2016, the Claimant depones that he was employed by Trust Bank Limited on 1st January 1990. The Bank was placed under liquidation and on 16th August 2001, the Claimant's employment was terminated.
3. The Claimant was subsequently employed by the Bank (In Liquidation) through the Respondent which was the Liquidating Agent. The Claimant resigned on 29th September 2011 for what he terms as unfair labour practices.
4. The Claimant further depones that he was depressed and suffered from Post-Traumatic Stress Disorder (PTSD)/Major Depressive Disorder from 2009 up to the time he resigned.
5. Looking at the draft Memorandum of Claim attached to the Claimant's application, he seeks relief for claims dating as far back as 2001. The applicable limitation law would therefore be the Limitation of Actions Act.
6. Section 4(1) (a) of the Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued.
7. Part III of the Act provides specific instances in which time may be extended under the Act. This Court is well aware of the decision by the Court of Appeal in *Divecon Limited v Shirinkhanu Sadrudin Samani (Civil Appeal No. 142 of 1997)* where it was held that Part III of the Act does not confer jurisdiction on courts to entertain applications for extension of time with respect to actions arising from contract.
8. *Divecon v Samani* is binding on this Court. However, in my understanding, this decision addressed itself to situations where the limitation period has actually run out as against a claimant. It did not deal with situations where time stops to run for a recognizable reason. *Chitty on Contracts (Volume I)* at page

28-065 states that time begins to run against a claimant who is in a position to commence proceedings but neglects to do so.

9. The Applicant has produced a medical report from Dr. F.R Owiti, Consultant Psychiatrist confirming that from the year 2009 up to the time he resigned from the Bank (In Liquidation) the Claimant developed Post Traumatic Stress Disorder (PTSD)/Major Depressive Disorder. Dr. Owiti further confirms that the Claimant was on intense therapy until 2015 when the Claimant showed improvement.

10. From the medical report by Dr. Owiti it seems to me that until 2015, the Applicant suffered from a disabling disease, rendering him incapacitated and therefore incapable of bringing his claim in time. Consequently, the Court finds that time did not begin to run against the Applicant until 2015 when his Doctor noted marked improvement.

11. The Applicant's application to file his claim out of time is therefore allowed.

12. The costs of the application will be in the cause.

13. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF JANUARY 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Ambani for the Applicant

No appearance for the Respondent