



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**MISCELLANEOUS APPLICATION NO 10 OF 2016**

**ZACHARY OMUNDI GUTWA.....APPLICANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**RULING**

1. The Applicant's application brought by Notice of Motion dated 20<sup>th</sup> January 2016 and filed in Court on 26<sup>th</sup> January 2016 seeks leave to file suit against the Respondent out of time.
2. The application which is supported by the Claimant's affidavit sworn on 20<sup>th</sup> January 2016 is based on the following grounds:
  - a) That the Applicant was an employee of the Respondent;
  - b) That the Respondent unprocedurally terminated the Applicant's employment on 7<sup>th</sup> February 2003;
  - c) That the Applicant has used several avenues to have the matter resolved out of court, the last being the Commission on Administrative Justice (Office of the Ombudsman);
  - d) That by letter dated 20<sup>th</sup> August 2015, the Office of the Ombudsman informed the Applicant that they had failed to resolve the matter;
  - e) That the Respondent will not suffer prejudice if the application is allowed.
3. The Applicant's plea in this application is for extension of time for filing of suit against the Respondent. From the documents filed in Court, the cause of action herein arose in 2003. The applicable limitation law would therefore be the Limitation of Actions Act and 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.
4. In advancing his case the Applicant drew the attention of the Court to several letters between himself and the Respondent as well as to a complaint to the Commission on Administrative Justice (Office of the Ombudsman).
5. This Court is however bound by the decision of the Court of Appeal in *Divecon Limited v Shirinkhanu Sadrudin Samani (Civil Appeal No. 142 of 1997)*, where it was held that the import of Section 4(1)(a) of the Limitation of Actions Act is that the Court has no jurisdiction extend time for

actions arising from contracts, including contracts of employment.

6. That being the case, the Applicant's application fails and is dismissed with no order for costs.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24<sup>TH</sup> DAY OF  
FEBRUARY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Nyamweya for the Applicant

No appearance for the Respondent