



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

MISCELLANEOUS APPLICATION NO 121 OF 2016

DAVID NDERITU MWANGI.....CLAIMANT

VERSUS

TUSKER MATTRESSES LIMITED.....RESPONDENT

RULING

1. By this miscellaneous application the Claimant seeks leave of the Court to file his claim against the Respondent out of time. The application which is supported by the affidavit of Vincent Githu Kabi, Advocate sworn on 26th October 2016 is based on the following grounds:

- a) That the statutory period stipulated under Section 90 of the Employment Act, 2007 within which to institute proceedings against the Respondent has expired;
- b) That the failure to institute the proceedings within the statutory period of three (3) years was occasioned by the delay in determination of ***Criminal Case No 1646 of 2008 (Republic v David Nderitu Mwangi)*** Which lasted seven (7) years;
- c) That the criminal case has since been determined with the Claimant being acquitted on 30th June 2015;
- d) That in August 2015, the Claimant reported a dispute at the Ministry of Labour, Social Security and Services;
- e) That the Respondent agreed to settle the Claimant's claim but failed to honour its commitment;
- f) That it is in the interest of justice that the orders sought are granted.

2. The issue for determination in this application is whether the Claimant has made out a case for extension of time for filing of a claim against the Respondent.

3. The Claimant cites the pendency of ***Criminal Case No 1646 of 2008*** as the reason for the delay in bringing his claim. This Court has held in the past that the pendency of a criminal trial against an employee has no bearing on other processes relating to the employment contract (see ***Timothy Asudi Malwa v E-Gap Solutions Limited & another [2014]eKLR***)

4. In reference to Section 90 of the Employment Act, 2007 the law is that the Court has no jurisdiction to

extend time for filing of claims falling under the Act (see *Maria Machocho v Total Kenya Limited [2013] eKLR*; *George Hiram Ndirangu v Equity Bank [2015] eKLR* and *Justus Ochido Ope v Kenyatta University [2016] eKLR*).

5. The Claimant's application dated 26th October 2016 is therefore declined with no order for costs.

Orders accordingly

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 10TH DAY OF MARCH 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Kithinji for the Claimant

No appearance for the Respondent