

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 102 OF 2016

IN THE MATTER OF LEAVE TO FILE SUIT OUT OF TIME

NAHASHON NJOROGE MWAURA.....CLAIMANT

VERSUS

SOUTH SIOUX FARMS LIMITED..... RESPONDENT

RULING

1. The applicant herein seeks extension of time to file a suit. The application is brought under section 27 and 28 of the Limitation of Actions Act, and Order 37 rule 6 of the Civil Procedure Rules.

2. The applicant states that he fell ill around November, 2012 and was frequently in and out of hospital for much of the year 2013. He sought and obtained sick off but upon recovery in the month of March, 2014 he sought to return to work but was informed that he had been dismissed.

3. Limitation period in respect of employment matters is provided for under section 90 of the Employment Act and applications to this court are governed by the rules of the Court and not Civil Procedure Rules unless expressly provided. But anyhow this court has ruled severally that only actions based on tort are capable of extension of limitation period. Therefore, both section 27 and 28 of the Limitation of Actions Act and Section 90 of the Employment Act do not admit of extension of time for filing actions based on contract once time for doing so has lapsed.

4. The application is therefore found with no merit and is hereby dismissed with costs.

5. It is so ordered.

Dated at Nairobi this 28th day of April 2017

Abuodha J. N.

Judge

Delivered this 16th day of June 2017

In the presence of:-

Mwaura for the Claimant

Abuodha J. N.

Judge