



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
MISCELLANEOUS APPLICATION NO 41 OF 2017
PAUL MUSYOKA KIMATU.....APPLICANT
VERSUS
ULTIMATE ENGINEERING LIMITED.....RESPONDENT
RULING

1. By an *ex parte* Notice of Motion filed in Court on 6th March 2017, the Applicant seeks leave to file suit out of time. The application which is supported by the Applicant's affidavit sworn on even date is based on the following grounds:

- a. That the Respondent has, for a long time, kept promising to pay the Applicant;
- b. That when it became evident that the Respondent would not pay the Applicant, its Director was charged in CMC Cr Case No 1250 of 2012;
- c. That the criminal case was finalized on 14th May 2014 when the Director was acquitted;
- d. That the Applicant was not aware of the outcome of the case until 2nd August 2016;
- e. That the failure to file suit in time was not deliberate but due to circumstances beyond the Applicant's control;
- f. That the Applicant has a good case with overwhelming chances of success;
- g. That the Respondent is not likely to suffer any prejudice if leave to file suit out of time is granted.

2. In his affidavit in support of this application, the Applicant depones that his employment was terminated 13th November 2010. His claim therefore falls under the Employment Act, 2007 whose Section 90 provides as follows:

90. Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

3. The question as to whether this Court has jurisdiction to extend time under Section 90 of the Employment Act, 2007 is now well settled. Jurisprudence emerging in this regard is to the effect that the Court has no such jurisdiction, (see *Maria Machocho v Total Kenya Limited [2013] eKLR* and *Justus Ochido Ope v Kenyatta University [2016] eKLR*.)

4. The Applicant states that failure to file suit in time was due to the criminal case against the Respondent's Director. The pendency of criminal proceedings cannot be a legitimate reason for not filing an employment claim in time.

5. The final conclusion is that the Court has no jurisdiction to grant the orders sought by the Claimant. The application is therefore dismissed with no order for costs.

6. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF AUGUST 2017

LINNET NDOLO

JUDGE

Appearance:

Paul Musyoka Kimatu (the Applicant in person)

No appearance for the Respondent