

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

MISC. 6 OF 2017

SOLOMON MBEU KILOVOO.....APPLICANT

VERSUS

SEAL HONEY LIMITEDRESPONDENT

R U L I N G

1. Before the court is an Originating Summons dated 10/3/2017 seeking for leave to extend time within which to commence suit out of time against the respondent. The summons is supported by the affidavit sworn by the applicant on 10/3/2017. The claimant contends that he was employed by the respondent in 2003 and worked until September 2009 when he was dismissed on allegation of theft of money. Thereafter he was arrested and charged with theft by servant in Criminal case number 3348 of 2009. He remained in remand and after 5 years trial he was acquitted on 23/3/2015. Due to lack of funds, he could not instruct a lawyer until August 2016 when he served demand letter and brought this summons on 14/3/2017.

2. The issue for determination herein is whether leave to extend limitation period can issue. There is no dispute the suit herein is time barred because the cause of action arose in September 2009 when the claimant was dismissed for theft of his employer's money. His right to sue therefore lapsed in September 2012 after the expiry of 3 years from the date of the dismissal. Section 90 of the Employment Act provides in mandatory terms that no suit founded under the Act or contract of employment general shall be commenced after the lapse of 3 years next from the date when it arose except in the case of continuing damage, injury in default whereby a suit must be commenced within 12 months next after the cessation of the continuing damage, injury or default. The corollary to foregoing is that no one has the *locus standi* to sue and the court lacks jurisdiction to sustain a suit commenced after expiry of the limitation period.

3. After considering the submissions by the applicant and the supporting affidavit filed, I find no merits in the summons before the court and I dismiss it.

Dated, signed and delivered this 29th September 2017.

O. N. Makau

Judge