



**REPUBLIC OF KENYA**

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

**CAUSE NO 9 OF 2017**

**MICHAEL MURIITHI IRERI.....APPLICANT**

**VERSUS**

**WARGEN SERVICES LIMITED.....RESPONDENT**

**RULING**

1. The Applicant's application brought by Notice of Motion dated 30th January 2017 is for leave to file suit out of time.

2. The application, which is supported by the Applicant's own affidavit is based on the following grounds:

- a) That the delay in filing suit was due to reasons beyond the Applicant's control
- b) That the delay was caused by the Applicant's lack of funds to seek legal services as well as ill health;
- c) That the Applicant will suffer irreparable loss unless the application is allowed;
- d) That the delay has not been deliberate and is not inordinate;
- e) That it is in the interest of justice that the application is allowed.

3. In his supporting affidavit, the Applicant states that he was dismissed from employment on 9th September 2016, following a work related accident, which left him incapacitated. He adds that he had no funds to pursue his case.

4. In a replying affidavit sworn by the Respondent's Counsel, Patrick Kerongo he states that the current application is an afterthought, as the Applicant had, filed CMCC No 1612 of 2015, seeking damages, for a work related injury.

Counsel therefore challenges the Applicant's averment that he had no funds to seek legal services.

5. The Applicant states that his employment was terminated on 9th September 2016. His employment was therefore governed by the Employment Act, 2007. Section 90 of the Act 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.**

6. In interpreting this provision, the Court has severally ruled that it has no jurisdiction to extend time for claims arising from employment relationships governed by the Employment Act, 2007 (see *Maria Machochi v Total Kenya Limited* [2013] eKLR and *Justus Ochido Ope v Kenyatta University* [2016] eKLR).

7. In light of this jurisprudence, the Applicant's application is disallowed.

8. Each party will bear their own costs.

9. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF OCTOBER 2017**

**LINNET**

**NDOLO**

**JUDGE**

Appearance:

Mr. Ndegwa for the Applicant

Mr. Musyoki for the Respondent