



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAKURU**  
**MISC. APPLICATION NO. 9 OF 2017**  
**JOSEPH KIBII SIELE.....APPLICANT**  
**v**  
**TELKOM KENYA LIMITED.....1<sup>ST</sup> RESPONDENT**  
**GILGIL TELECOMS INDUSTRIES LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed the instant motion on 24 March 2017 seeking

1. ... (spent)

2. That this Honourable Court does give the applicant leave to file his claim against the Respondents.

3. That costs of this application be provided for.

2. The application was served upon the Respondents before the Court issued any such directives and the Respondents sought leave on 25 April 2017 to respond thereto.

3. The Court allowed the Respondents to respond to the application and in this respect, the 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection and a Verifying Affidavit while the 2<sup>nd</sup> Respondent filed a Replying Affidavit.

4. Authorities were also filed and arguments were taken on 22 June 2017.

5. It is not in dispute that the applicant was part of the Respondents' workforce whose contracts were terminated as part of a redundancy exercise in 2006.

6. It is also not in dispute that some of the Respondents' employees went to Court (High Court and subordinate Court) to claim certain reliefs arising from certain Circulars of 2001, 2003 and 2004.

7. It can also not be disputed that the applicant herein was not one of the litigants in the Court cases which were instituted.

8. To all intents and purposes, the cause(s) of action the applicant intends to institute are contractual in

nature (more specifically, employment contracts).

9. The law on limitation at the time of redundancies in 2006 was the Limitation of Actions Act (section 4(1) of the Act).

10. That statute has been the subject of numerous litigation and the jurisprudence on grant of leave in contractual cause(s) of action have become certain and accepted.

13. This Court need only refer to one or two cases which are binding upon it.

12. In *Willis Onditi Odhiambo v Gateway Insurance Co. Ltd* (2014) eKLR, the Court of Appeal was dealing with a situation where the parties had consented in the High Court to extension of time and it made reference to section 27 of the Limitation of Actions Act and held that

This section clearly lays down the circumstances in which the Court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. *The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort...* The parties could not confer jurisdiction on the judge by their consent.

13. The Court can also do no better than refer to the decision of the Court of Appeal in *Divecon v Samani* (1995-1998) 2 EA 48 that

*to us, the meaning of the wording of section 4(1) .....is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action......A perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that “the wording of section 4(1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked” (emphasis mine)*

14. In this Court’s respectful view, it has no power to do what the applicant is humbly requesting it to do, and therefore it must also decline the invitation.

15. The Court, in the event, orders that the motion dated 22 March 2017 be dismissed with costs to the Respondents.

**Delivered, dated and signed in Nakuru on this 6<sup>th</sup> day of November 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant            Mr. Aim instructed by Odhiambo & Odhiambo Advocates

For 1<sup>st</sup> Respondent    Mr. Mbugua Ngugi instructed by Chiuri, Kirui & Rugo, Advocates

For 2<sup>nd</sup> Respondent    Mr. Kisaka instructed by Wekesa & Simiyu, Advocates

Court Assistants    Nixon/Martin