



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT MOMBASA
MISC. APPLICATION NO. 35 OF 2016

BETWEEN

JULIUS KATANA KITHI.....APPLICANT

VERSUS

MINISTRY OF STATE FOR DEFENCE

THE ATTORNEY GENERAL.....RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Aboubakar, Mwanakitina & Company Advocates for the Claimant

Attorney General for the Respondents

RULING

1. The Applicant is a former Soldier, serving with the Kenya Navy, based at Mtongwe in Mombasa.
2. He alleges to have been seduced by a Superior Male Officer, to engage in homosexuality with the said Officer.
3. He prays the Court to extend the 3 year time limit, imposed on filing of employment Claims, under Section 90 of the Employment Act.
4. He has filed this Application dated 28th August 2017, asking the Court to allow him, file Claim out of time, and Draft Claim attached to the Application deemed to have been filed on time.
5. He states that Section 49, and Section 50 of the Employment Act 2007 allows the Court to grant him remedies for unfair and unlawful termination.
6. He prays for among other remedies, reinstatement, arrears of salary, and damages.

7. He prays the Court to extend the 3 year time limit, imposed on filing of employment Claims, under Section 90 of the Employment Act.

8. The Application is based on the Supporting Affidavit of the Applicant sworn on 19th July 2017.

9. The Application is opposed. The Respondents rely on Grounds of Opposition filed on 8th September 2017. Their position is that the Court does not have jurisdiction to extend time given under Section 90 of the Employment Act, on filing of employment Claims. The Respondents rely on the ***Court of Appeal decision, Mr. & Mrs. Justice E. Torgbor v. Ladislaus Odongo Ojuok (2015) e-KLR.***

The Court Finds:-

10. The position on extension of time given under Section 90, to file employment Claims is now well settled by the Court of Appeal.

11. That position, as stated in the Case of ***Justice Torgbor*** relied on by the Respondents, is that Courts do not have the power to extend time given in a statute, on filing of Claims.

12. The position has been restated in several other decisions of this Court, relying on Court of Appeal decisions.

13. It is also noted that under Section 3 of the Employment Act, the Act does not apply to armed forces, as defined in the Armed Forces Act.

14. Even if this Court had the power to extend time, it would not apply the Employment Act 2007, to the dispute.

15. The Applicant should explore ways of redress through a Constitutional Petition. His allegations against the Respondents are grave. The Court cannot however extend time as prayed, and redress by application of the Employment Act 2007.

IT IS ORDERED:-

a) The Applications dated 29th November 2016, and Amended on 19th July 2017, is dismissed with no order on the costs.

Dated and delivered at Mombasa this 15th day of December 2017.

James Rika

Judge