



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO 24 OF 2015**

**NELSON MWANGI NDERITU.....APPLICANT**

**VS**

**KENYA TEA DEVELOPMENT AGENCY.....1ST RESPONDENT**

**THETA TEA FACTORY.....2ND RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT**

**INSPECTOR-GENERAL NATIONAL POLICE SERVICE.....4TH RESPONDENT**

**ATTORNEY GENERAL.....5TH RESPONDENT**

**RULING**

1. The Applicant's application brought by way of an *ex parte* Notice of Motion dated 3rd March and filed in Court on 10th March 2015 seeks leave to file suit against the Respondents out of time. The application which is supported by the Applicant's affidavit sworn on 3rd March 2015 is based on the following grounds:

- a. The Applicant's failure to institute his claim within the stipulated period was caused by destruction of court records by a fire that gutted down Gatundu Law Courts in 2009;
- b. The intended suit clearly establishes a cause of action;
- c. The Applicant would suffer great injustice if the order sought is not granted.

2. In the Applicant's supporting affidavit sworn on 3rd March 2015, he depones that he was employed by the 1st and 2nd Respondents from 1st July 1989 until 20th July 2008 when he was summarily dismissed on allegations of theft.

3. He was subsequently charged in Criminal Case No. 160 of 2008 at Gatundu Law Courts where he was acquitted under Section 210 of the Criminal Procedure Code. Before the Applicant could get the appropriate records to enable him lodge his claim, fire gutted down Gatundu Law Courts on 18th May 2009 and all files, including the Applicant's were destroyed. Having made numerous inquiries on the status of his file, the Applicant was finally notified by the Chief Magistrate by letter dated 30th January 2015 that his file had been destroyed in the fire.

4. The single issue for determination in this application is whether the Applicant has made out a case for leave to file his claim out of time. According to the documents filed in Court, the cause of action arose

on 25th July 2008 when the Applicant was summarily dismissed. His claim would therefore fall under the Employment Act, 2007 which came into effect on 2nd June 2008.

5. The relevant provision on limitation of actions is Section 90 of the Act which 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 twelve months next after the cessation thereof.***

6. The cause of action in this case arose on 25th July 2008 and the Applicant therefore ought to have brought his claim not later than 24th July 2011. The issue of limitation of actions is a substantive matter touching on the jurisdiction of the Court to hear and determine claims brought before it and as held by **Radido J** in ***Peter Nyamai & 7 Others v M.J Clarke Limited [2013]*** this Court has no jurisdiction to extend time for claims arising out of employment contracts governed by the Employment Act, 2007. That being the case, the Applicant's application is dismissed with no order for costs.

7. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF JANUARY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Sena for the Applicant (*ex parte*)