



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO 104 OF 2015

ELIAZAR BULIMO.....APPLICANT

VS

MILLIE FRUIT PROCESSORS LIMITED.....RESPONDENT

RULING

1. This ruling relates to the Applicant's miscellaneous application brought by way of Originating Summons dated 23rd October and filed in Court on 26th October 2015 seeking leave to file suit of time.
2. The application which is supported by the Applicant's affidavit sworn on 23rd October 2015 is based on the following grounds:
 - a) That the Applicant was unlawfully terminated from employment on 3rd March 2008 and on 23rd April 2010, he filed Civil Case No 2446 of 2010 at the Chief Magistrate's Court at Milimani;
 - b) That the said suit was struck out on the ground that the Chief Magistrate's Court had no jurisdiction. An application for review was dismissed on 28th March 2013 and an appeal to the High Court was dismissed on 4th February 2015. Subsequently, the Applicant erroneously filed Miscellaneous Application No 71 of 2015 seeking transfer of CMCC No 2446 of 2010 to this Court. This application was withdrawn on 8th October 2015;
 - c) That the justice of this case dictates that the Applicant be granted leave to file his suit out of time;
 - d) That the peculiar circumstances that the Applicant finds himself in dictate that he should be given an opportunity to be heard.
3. The single issue for determination in this application is whether the Applicant has established a case for enlargement of time to file his claim. The cause of action in this case arose on 3rd March 2008 when the Claimant's employment was terminated. The applicable limitation law would therefore be the Limitation of Actions Act.
4. Section 4(1) (a) of the Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued. Applying this law, the Applicant ought to have brought his claim by 2nd March 2014.
5. Part III of the Limitation of Actions Act provides specific instances in which time may be extended

under the Act. However, as held by the Court of Appeal in *Divecon Limited v Shirinkhanu Sadrudin Samani (Civil Appeal No. 142 of 1997)* Part III does not confer jurisdiction on courts to entertain applications for extension of time with respect to actions arising from contract.

6. The Applicant filed his claim in the Chief Magistrate's Court on 23rd April 2010 which was well within time. This case was however dismissed on the ground that the Court had no jurisdiction to entertain the claim. A subsequent application for review before the Chief Magistrate's Court and an appeal to the High Court were also dismissed.

7. It was submitted on behalf of the Applicant that there was some confusion on jurisdiction of the various courts to entertain employment claims. This Court was unable to understand the confusion alluded to since even before the establishment of the Employment and Labour Relations Court as currently constituted, the Industrial Court which operated as a tribunal under the Labour Institutions Act was available to hear and determine employment matters. That being the case, the Applicant cannot say that he had no forum for the determination of his case.

8. At any rate, the *Divecon v Samani Case* which is binding on this Court is clear that I have no jurisdiction to entertain an application for enlargement of time where the subject matter arises from contract. The Applicant's application therefore fails and is dismissed with no order for costs.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF FEBRUARY 2016

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JUDGE

Appearance:

Mr. Sumba for the Applicant

No appearance for the Respondent