

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 949 OF 2012

EX PARTE

PAUL DEDAN OCHIENG

EVANS OBUYA NYATICHI

THOMAS OBUOKO OKAYO..... APPLICANTS/ INTENDED CLAIMANTS

VERSUS

HARAMBEE CO-OPERATIVE SAVINGS &

CREDIT SOCIETY.....INTENDED RESPONDENT

RULING

1. The 3 Applicants filed their Application on the 22nd December 2015. The Application is improperly registered as a 'Cause.' It is a Miscellaneous Application which seeks to have Claim filed against the Applicants' former Employer out of time. The Applicants incorrectly describe themselves as 'Claimants.' They are not 'Claimants' at this stage, as no Claim has been filed. Similarly there is no 'Respondent' but only an 'Intended Respondent,' in this Miscellaneous Application.
2. They state they were employed by the Intended Respondent on various dates between 1988 and 2005. They worked in various positions, in Nairobi and Mombasa. They were charged with theft by servant at the instigation of their former Employer, in Mombasa Chief Magistrate's Court Criminal Case Number 3629 of 2009. They were convicted and sentenced by the Trial Court, but released on appeal by the High Court Mombasa.
3. During the pendency of the criminal process, they reported to work, but were locked out by their Employer. They were not issued with any letters asking them to show cause why disciplinary action should not issue. They were not issued any letters of termination. After their appeal was determined in their favour, they wrote to their former Employer through their Advocates, asking to return to work. There was no response.
4. They intend to bring a Claim against their former Employer for compensation for unfair termination, and for terminal dues. They are apprehensive that they are time-barred in doing so, under Section 90 of the Employment Act 2007, which places a ceiling of 3 years within which to file Claims, from the date of their accrual. They filed this Application citing Section 26 and 28 of the Limitation of Actions Act as enabling the Court in extending time.

The Court Finds:-

5. The Court is not able to say when the Applicants' cause of action accrued. If it is true they were not issued with termination letter, or other communication made by their former Employer with a clear date of termination, the date when the cause of action accrued cannot be presumed. The apprehension that time has lapsed, without having a date when the Employer made the termination decision, is unfounded. The

Court cannot extend time without evidence on the date when time started running, and when time ran out.
IT IS ORDERED:

(a) The Applicants are at liberty to file their Claims.

(b) The Intended Respondent shall be free to raise objection to the Intended Claims under Section 90 of the Employment Act, should there be evidence on the date of termination which at this point is undisclosed.

Dated and delivered at Mombasa this 22nd day of March, 2016

James Rika

Judge