



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

MISC. APPL. NUMBER 58 OF 2015

EDWARD MIIGU KARIUKI.....CLAIMANT

VERSUS

TOYOTA K. LIMITED.....RESPONDENT

RULING

1. By an application dated 18th June, 2015 the applicant seeks enlargement of time to file a claim against the respondent. The application is brought on the main ground that upon termination of the proposed claimant's services he was prosecuted and the criminal trial took a long time to conclude. Upon conclusion, the period limited for filing a suit had lapsed.
2. Section 90 of the Employment Act provides as follows:-

**“...Notwithstanding the provisions of section 4(1) of the Limitation of Action 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 a continuing injury or damage, within twelve months next after the cessation thereof.”**
3. Section 4 (1) of the Limitation of Action Act lists actions which may be brought prior to expiry of six years from the date on which the cause of action accrued. Section 4(2) of the said Act however provides that actions based on tort may not be brought after expiry of three years from the date on which the cause of action accrued.
4. However, under section 27 of the Act, actions based on tort may be brought after the expiry of three years provided the Court has granted leave to do so prior to or after the commencement of the action.
5. Section 90 of the Employment Act referred to above, as well as section 4(1) of the Limitation of Actions Act do not provide for extension of time to bring actions based on contracts. This therefore means no extension of time is permissible for these actions once limitation has elapsed. To this extent this application cannot be granted hence stands dismissed with costs.
6. It is so ordered.

Dated at Nairobi this 13th day of May 2016

Abuodha Jorum Nelson

Judge

Delivered this 13th day of May 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge