



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 92 OF 2015**

**PETER MAGANJU KWARIA..... CLAIMANT**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**GENERAL JEREMIAH KIANGA MUTINDA.....2<sup>ND</sup> RESPONDENT**

**LT. GENERAL A.S.K. NJOROGE.....3<sup>RD</sup> RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 13<sup>th</sup> May, 2016)

**RULING**

The claimant filed on 15.12.2015 a notice of motion dated 14.12.2015 seeking orders for extension of time limited for filing of his suit and the suit having been already been filed to be deemed duly filed. The application invoked sections 27 and 28 of the Limitation of Actions Act, and Section 12 of the Industrial Court Act, 2011 and was supported with the claimant's affidavit filed together with the application. The application stated that the claimant was dismissed from service on 05.12.2004. The claimant filed civil suit No. 13130 at the in the Chief Magistrate's Court at Milimani and the suit was struck out on 17.09.2007 because the court lacked jurisdiction. An application at the High Court seeking transfer of the suit to the High Court was declined. The applicant instituted the present suit outside the 3 years of limitation.

The respondents filed on 29.10.2015 a notice of preliminary objection that the suit was time barred. The respondents also filed on 23.12.2015 the replying affidavit of Francis Okello Makori, Litigation Counsel.

The present suit was filed on 17.04.2009 and is said that the cause of action accrued on 05.12.2004. The court finds that at the time of the cause of action the Employment Act, 2007 was not in force. The applicable law was section 4 of the Limitation of Actions Act, Cap 22 where limitation of actions for contract was 6 years. In view of that finding the court finds that the application filed for the claimant for extension of time was misconceived as the 6 years had not lapsed.

The respondent has submitted that the suit was time barred under section 3(2) of the Public Authorities Limitation Act Cap 39 which provides that no proceedings founded on contract shall be brought against the government or a local authority after the end of three years from the date on which the cause of action accrued. The court upholds that objection and the claimant's application dated 14.12.2015 and the claimant's suit herein are liable to dismissal. The court has taken into account the history and circumstances of the case and considers that it will be fair for parties to bear own costs of the suit and the application.

In conclusion the preliminary objection is hereby upheld that the suit was time barred under section 3(2) of the Public Authorities Limitation Act Cap 39 and the court lacks jurisdiction to extend the time of limitation as provided in the section, and, the claimant's application dated 14.12.2015 and the claimant's suit are hereby dismissed with orders that each party shall bear own costs of the application and the suit.

**Signed, dated and delivered in court at Nyeri this Friday, 13<sup>th</sup> May, 2016.**

**BYRAM ONGAYA**

**JUDGE**