

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 65 OF 2016

SHEMINAH AGLAE CLAIMANT/APPLICANT

VERSUS

KENYA AIRWAYS RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa on 30th June, 2016)

RULING

1. The Ex parte Application was filed by the Applicant herein through a Notice of Motion brought under Section 3, 12(3) and 20 (1) of Industrial Court Act No. 20 of 2011, Rule 27(1)(g) of the Industrial Court (Procedure) Rules 2010, Article 159(2) of the Constitution of Kenya, Section 90 of Employment Act Cap 226 of Laws of Kenya and all other enabling provisions of the law.
2. The Applicant seeks leave of this Court to file the intended claim against the Respondent out of time. She also wants the Draft Memorandum of Claim Annexed to this Application marked "A" be deemed as duly filed upon payment of the requisite Court charges.
3. The Applicant avers that she didn't file this claim in time because she had been unwell and had even discussed her illness with one Mr. Odinga who was her Cluster Manager. She avers that the said Cluster Manager informed her that she would receive half her salary and eventually no salary if her sick leave ended. Despite this promise, the Applicant avers that she was finally dismissed from work apparently for absconding duty.
4. Claimant's dismissal letter is annexed SA 2 dated 10.6.2012. From the documents the Applicant has attached to this application the Doctor who had attended to her in 2012, noted that she had been on sick off for 6 months and more treatment was to continue.
5. On 6/12/2011 she had been seen at the Respondent's patient clinic and the Doctor one Doctor Mose indicated that she had a long standing back problem and had been advised to undergo surgery. This was also the advice of Doctor Timothy Kagoda Byakika on 15.12.2011.
6. Despite all this evidence of the Claimant being unwell, it is not clear if at the moment she has recovered or not. It is not clear why she didn't take any action in this matter since 2012 which is the last communication on the issue of illness. There is no evidence that since 2012, the Applicant has been so sick as not to take any action against her employer after being informed that she had been dismissed from the service.
7. This notwithstanding, Section 90 of Employment Act is clear that a claim can only be brought within 3 years and this Section does not seem to leave room for extension of time by Court in any case.
8. That being the position, I do not find the Application merited and I decline to allow it.

Read in open Court this 30th day of June, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Gitahi holding brief for Ondieki for Applicant - Present

No appearance for Respondent – Absent