



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAIROBI

MISCELLANEOUS APPLICATION NO 16 OF 2016

MICHAEL OGWAPIT.....APPLICANT

VERSUS

LORDSHIP AFRICA LIMITED.....1ST RESPONDENT

EPIX INVESTMENTS LIMITED.....2ND RESPONDENT

RULING

1. By an *ex parte* Notice of Motion dated 11th February 2016, the Applicant seeks leave of the Court to file suit out of time. The application which is supported by the Applicant's affidavit is based on the following grounds:

- a. That the Applicant's case has merit and it is in the interest of justice that he be allowed to prosecute his claim fully;
- b. That the delay was due to the difficulties encountered by the Applicant in trying to trace and procure the necessary documentation to support his claim;
- c. That the Respondent had for a long time kept the Applicant clinging to the hope that his salary arrears would be paid;
- d. That the Applicant is desirous to have this matter pursued to get justice;
- e. That there has not been delay in bringing the application;
- f. That it is in the interest of justice and fairness that the orders sought are granted;
- g. That the orders if granted will not prejudice the Respondents.

2. In his supporting affidavit sworn on 11th February 2016, the Applicant deposes that sometime in September 2008 he was contracted by the 1st Respondent to provide services as Commercial Director. The 1st Respondent later founded the 2nd Respondent as a subsidiary company to operate as its investment and transaction arm. From 2010 the Applicant served as a Director of both the 1st and 2nd Respondents.

3. The Applicant further deposes that in 2010 the Respondents failed to pay his salary and to reimburse expenses he had incurred in fulfilling his obligations.

As a result of the frustrations he had encountered, the Applicant resigned from the Respondents' employment on 29th July 2010.

4. The issue for determination in this application is whether the Applicant has made out a case for enlargement of time for filing suit against the Respondents.

5. The limitation law on account of claims falling within the Employment Act, 2007 is found in Section 90 of the Act which provides as follows:

90. Notwithstanding the provisions of Section 4(1) of the Limitation of Actions 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 continuing injury or damage within twelve months next after the cessation thereof.

6. The question as to whether the Court can extend time under the foregoing provision was addressed by **Radido J** in ***Maria Machocho v Total Kenya Limited [2013] eKLR*** where he held that this Court has no jurisdiction to extend time for filing of claims falling under the Employment Act, 2007. I reached the same conclusion in ***George Hiram Ndirangu v Equity Bank [2015] eKLR*** and ***Justus Ochido Ope v Kenyatta University [2016] eKLR***.

7. That being the case, I must decline the Applicant's application which is hereby dismissed with no order for costs.

8. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 30TH DAY OF SEPTEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Ngakari for the Applicant

No appearance for the Respondents