



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

MISCELLANEOUS APPLICATION NO 78 OF 2016

JAMES NYAGA WAMBUGU AND GREGORY MARTIN OREGO

(SUING ON THEIR OWN BEHALF AND ON BEHALF OF 180 EX

TELKOM EMPLOYEES).....APPLICANTS

VERSUS

TELKOM KENYA LIMITED.....RESPONDENT

RULING

1. The Applicants' application brought by an *ex parte* Notice of Motion dated 29th June 2016 and filed in Court on 30th June 2016 seeks extension of time for filing suit for recovery of terminal dues.

2. The application, which is supported by an affidavit sworn by James Nyaga Wambugu and Gregory Martin Orego on 29th June 2016 is based on the following grounds:

- (a) The Applicants are former employees of the Government of Kenya;
- (b) Sometime in the year 2000, the Government published a civil service reform programme that would involve retrenchment of staff working in parastatals wholly or partially owned by the Government;
- (c) The Government issued circulars giving guidelines on how the staff retrenchment would be carried out;
- (d) The Government put aside adequate finances to cater for the cost of the retrenchment;
- (e) The Government went further to ensure that the Applicants were cushioned from economic vulnerability by exempting their retrenchment package from taxation;
- (f) The Applicants and the other 180 employees were however sent home with a package that was contrary to the guidelines issued by the Government as well as employment laws and the Applicants were exposed to financial suffering;
- (g) At the time, the Applicants priority was to find ways of alleviating the financial suffering they and their families were facing;
- (h) The Applicants later came to learn of an intention to sue the Respondent through friends who

had seen public advertisements;

(i) The Applicants forwarded their documents to committees that had been set up to pursue the court cases filed against the Respondent;

(j) Upon settlement of the cases, the Applicants learnt that their names and those of their 180 colleagues were missing from the list of those to be paid. It is at this point that they realized that their names were not included in the list of plaintiffs.

3. The Applicants' plea is for extension of time for filing suit against the Respondent. Counsel submitted that the cause of action herein arose in 2006. The applicable limitation law would therefore be the Limitation of Actions Act.

4. Section 4(1)(a) of the Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued and as held by the Court of Appeal in *Divecon Limited v Shirinkhanu Sadrudin Samani (Civil Appeal No. 142 of 1997)*, the Court has no jurisdiction extend time.

5. The Applicants' application therefore fails and is dismissed with no order for costs.

6. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF OCTOBER 2016

LINNET NDOLO

JUDGE

Appearance:

Miss Kitonga for the Applicants

No appearance for the Respondent