



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
MISCELLANEOUS APPLICATION NO 44 OF 2016
THOMAS ICHARIA CHEGE.....APPLICANT
VERSUS
TELKOM KENYA LIMITED.....RESPONDENT

RULING

1. By an *ex parte* Originating Summons dated 12th April 2016 and filed in Court on even date, the Applicant seeks extension of time for filing of claim. The application, which is supported by the Applicant's affidavit sworn on 12th April 2016 is based on the following grounds:

- a. That the period within which to file the suit herein has expired;
- b. That the delay in filing the suit was occasioned by the fact that the Applicant was diagnosed with a schizoaffective illness from the year 2006 to date;
- c. That the Applicant has not been able to raise funds to hire an Advocate to handle his claim against the Respondent;
- d. That it was not until 29th February 2016 that the Applicant found out that the suit had not been filed;
- e. That upon instructing his current Advocate he discovered that his claim was time barred;
- f. That the Applicant stands to suffer prejudice and loss if the application is not allowed as he has a good case against the Respondent with high chances of success;
- g. That it is in the interest of justice that this application be allowed.

2. From the documents filed in Court, the Claimant's employment was terminated on 2nd August 2006. His claim would therefore be governed by the repealed Employment Act (Cap 226) and the applicable limitation law would be the Limitation of Actions Act.

3. Section 4(1) (a) of the Limitation of Actions 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.

4. Part III of the Act provides specific instances in which time may be extended under the Act. This Court

is well aware of the decision by the Court of Appeal in ***Divecon Limited v Shirinkhanu Sadrudin Samani (Civil Appeal No. 142 of 1997)*** to the effect that Part III of the Limitation of Actions Act does not confer jurisdiction on courts to entertain applications for extension of time with respect to actions arising from contract.

5. ***Divecon v Samani*** remains good law and is binding on this Court. However, in my understanding, this decision addressed itself to situations where the limitation period has actually run out as against a claimant. It did not deal with situations where time stops to run for a recognizable reason. ***Chitty on Contracts (Volume I)*** at page 28-065 states that time begins to run against a claimant who is in a position to commence proceedings but neglects to do so.

6. The Applicant in the case now before the Court has produced medical reports showing that he has had a long term schizoaffective illness. A Medical Board sitting at the Spinal Injury Hospital on 8th January 2009 came to the following conclusion on the Applicant:

“He gets symptoms of mental condition with or without medication.

This is chronic condition that will require medicate (sic) for a long period of time. We therefore recommend retirement on medical grounds.”

7. The Applicant also produced a long term prescription issued to him at Mathari Hospital on 8th November 2010. Further, a note issued by Dr. P.W. Anduuru on 31st March 2016 confirms that the Applicant was admitted at Avenue Hospital in August 2015 suffering from Major Depressive Disorder

8. From these medical records, it is evident that the Applicant has, since the accrual of the cause of action herein, been suffering from a disabling disease, rendering him incapacitated and therefore incapable of bringing his claim in time. Consequently, the Court finds that time did not begin to run against the Applicant until August 2015 when he was discharged from confinement at Avenue Hospital.

9. The Applicant's application to file his claim out of time is therefore allowed.

The costs of the application will be in the cause.

10. Orders accordingly.

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

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JUDGE

Appearance:

Mr. Lovoni for the Applicant

No appearance for the Respondent