



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**MISCELLANEOUS APPLICATION NO 88 OF 2016**

**PATRICK ONDARI.....APPLICANT**

**VERSUS**

**NATIONAL OIL CORPORATION.....RESPONDENT**

**RULING**

1. By an Originating Summons dated 26<sup>th</sup> July 2016 and filed in Court on 27<sup>th</sup> July 2016, the Applicant seeks leave to file suit out of time. The application which is supported by the Applicant's affidavit sworn on 26<sup>th</sup> July 2016 is based on the following grounds:

- a) The Applicant is a former employee of the Respondent having been employed on 4<sup>th</sup> December 2007 as a loader;
- b) On 27<sup>th</sup> July 2012, the Applicant received a suspension letter dated 25<sup>th</sup> July 2012 indicating that he had been suspended for an unspecified period at half salary and full allowances which were never paid to him;
- c) The Applicant referred the matter to the Kenya Petroleum Oil Workers Union which took it up and wrote a letter dated 18<sup>th</sup> October 2012 demanding that the Applicant be reinstated;
- d) On 1<sup>st</sup> November 2012, the Applicant received a letter of summary dismissal indicating that he had been summarily dismissed for denying having been seen by two unidentified security officers receiving a five litre jerry can of petrol from one Mr. Kariuki, a driver of a truck Registration Number KBL 485L which he allegedly used to siphon fuel;
- e) The Union subsequently filed Cause No 1106 of 2012 against the Respondent seeking for the Applicant's reinstatement but the case was dismissed on 26<sup>th</sup> May 2016 on the ground that there was no evidence that the alternative dispute resolution mechanism had been exhausted and that the Union had filed an amended claim without leave of the Court;
- f) From the date the Applicant was dismissed on 1<sup>st</sup> November 2012, it was three years and eight months which was beyond the limitation period provided for under Section 90 of the Employment Act;
- g) The Applicant intends to file a fresh claim against the Respondent for unfair dismissal and therefore seeks leave of the Court to file it out of time;

h) The delay was caused by the fact that there was another claim filed by the Union in which the Applicant was the Grievant.

2. The single issue for determination in this application is whether the Claimant has made out a case for extension of time for filing a claim against the Respondent.

3. Section 90 of the Employment Act which is the applicable limitation law provides as follows:

***“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.***

4. There is now firm jurisprudence from this Court to the effect that the Court has no jurisdiction to extend time for filing of claims falling under the Employment Act, 2007 (see ***Maria Machocho v Total Kenya Limited [2013] eKLR; George Hiram Ndirangu v Equity Bank [2015] eKLR*** and ***Justus Ochido Ope v Kenyatta University [2016] eKLR***).

5. In light of this jurisprudence, the Applicant’s application dated 26<sup>th</sup> July 2016 is declined with no order for costs.

6. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI**

**THIS 18<sup>TH</sup> DAY OF NOVEMBER 2016**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Mageto for the Applicant

No appearance for the Respondents