



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

MISC. APP NO.116 OF 2014 (OS)

MICHAEL CHEROGONY CHERONO.....CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. The applicant herein seeks leave of this Court to institute proceedings against the respondent out of time.
2. The application is brought on the main grounds that upon retirement, the applicant went into protracted verbal and written negotiations with the respondent to have his pension paid hence the process of filing the suit was delayed. According to the applicant, he has a good case against the respondent with high chances of success. He further states that the delay in filing the suit was compounded by financial limitation which delayed him in seeking legal redress.
3. Section 90 of the Employment Act provides as follows:-

“...Notwithstanding the provisions of section 4(1) of the Limitation of Action 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 a continuing injury or damage, within twelve months next after the cessation thereof.”
4. Section 4 (1) of the Limitation of Action Act lists actions which may be brought prior to expiry of six years from the date on which the cause of action accrued. Section 4(2) of the said Act however provides that actions based on tort may not be brought after expiry of three years from the date on which the cause of action accrued.
5. However, under section 27 of the Act, actions based on tort may be brought after the expiry of three years provided the Court has granted leave to do so prior to or after the commencement of the action.
6. Section 90 of the employment Act referred to above, as well as section 4(1) of the Limitation of Actions Act do not provide for extension of time to bring actions based on contracts. This therefore means no extension of time is permissible for these actions once limitation has elapsed. To this extent this application cannot be granted hence stands dismissed with costs.
7. It is so ordered.

Dated at Nairobi this 19th day of March 2015

Abuodha J. N.

Judge

Delivered this 19th day of March 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge