



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

MISC. APPL. NO. 15 OF 2012

GEORGE HILTON KATAMA PLAINTIFF/APPLICANT

VERSUS

MOMBASA CONTAINER TERMINAL

LIMITED.....DEFENDANT/RESPONDENT

M/s Ashubwe for the Claimant

Mr. Aitsi for the Respondent

RULING

1. The Application dated 27th July, 2012 seeks leave to file the suit out of time. The Application is opposed through the Replying Affidavit of Warui Mwangi dated 16th April, 2013.
2. The Applicant was dismissed from employment on 26th June, 2009 and the application was filed on 2nd August, 2012 three years and two months after the cause of action arose.
3. The Claimant seeks payment of salary for the month of June, 2009; payment in lieu of 21 days leave, payment of one (1) month in lieu of Notice and payment of service gratuity for the 18 years worked.
4. In terms of **Section 90 of the Employment Act, 2007** claims arising from a contract of employment must be filed within one (1) but *“in case of continuing injury or damage within twelve months next after the cessation thereof.”*
5. The claims set out are statutory in nature and constitute minimum obligations by the employer to the employee so that, failure to pay salary for days worked; to pay in lieu of leave days worked; to pay gratuity accrued for a period of 18 years constitute continuous injury or damages for purpose of **Section 90**.
6. This claim was therefore brought while the said injury was ongoing and had not abated.
7. The Application to file the suit outside the three year period is therefore granted since the case falls within the provision to **Section 90**.

Dated and Delivered at Nairobi this 13th day of March, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE