

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC. APPLICATION NO. 55 OF 2013

FRANCIS OBATI MAINA.....APPLICANT

VERSUS

ALPHA KNITS LIMITED.....RESPONDENT

RULING

1. The Applicant seeks leave to file suit out of time against the Respondent herein. The Originating Summons Application was filed on 28th August 2013 and was supported by the Affidavit of the Applicant.

2. Miss. Orina urged the Originating Summons and eloquently submitted that the Applicant's originating summons dated 6th August 2013 and filed on 28th August 2013 was up for determination. She submitted that the applicant sought leave to file suit out of time against the Respondent. The applicant's affidavit in support is annexed and basically the applicant seeks leave as he was unable to file suit. He was financially incapable. The cause of action accrued on 22nd August 2009 and he thus seeks leave of the court to file suit now that he has accumulated funds to enable him obtain the relief he seeks

3. I reserved the Ruling after hearing counsel for the Applicant and was to deliver it at 10.30am but due to an oversight the file was not dealt with leading to a deferment of the Ruling to today. The Applicant was an employee of the respondent and certain dues were not paid to him. At the time of dismissal, the applicable law was the Employment Act 2007 which has set a limit on the time within which to prefer a suit. Section 90 of the Employment Act 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. The Applicant's contract of service terminated on 22nd August 2009. The limitation would have set in 3 years later, that is to say, 22nd August 2012. He filed his application on 28th August 2013 a year and 6 days after the expiry of the cause of action.

5. The Claimant could have sought to access the Court as a pauper. He states that he was aware of the time constraints. This Court unlike the mainstream High Court does not require the payment of large sums of cash as filing fees. The fees to commence suit are more than it takes to instruct counsel and the Claimant even went as far as seek help from Kituo Cha Sheria. Kituo Cha Sheria even prepares pleadings for parties and lets them file and represent themselves. There was no letter from Kituo Cha Sheria to the proposed Respondent or to the Claimant acknowledging his claim was lodged with them. The receipt from Kituo is of no aid to the Claimant as it does not demonstrate there was any transaction prior to June 2013.

6. The upshot of the foregoing is that this Court has no discretion to extend time and the application for leave to file a suit out of time is devoid of merit and is dismissed.

Orders accordingly.

Dated and delivered at Nairobi this **21st** day of **April** 2015

Nzioki wa Makau

JUDGE