



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT KISUMU**

**CAUSE NO. 15 OF 2014**

(Before Hon. Lady Justice Maureen Onyango on 10<sup>th</sup> April, 2015)

JOHN OTIENO ODONGO ..... CLAIMANT

**-VERSUS-**

GOHAR GLASS MART ..... RESPONDENT

**R U L I N G**

By an ex-parte notice of motion dated 10th March 2014 and filed on 24th April 2014 the applicant seeks the following orders:-

1. This honourable court be pleased to grant leave to the applicant for extension of time to file his claim.
2. The plaint filed herein be deemed to have been filed and served on time.
3. That the cost be provided for.

The application is unsupported by the affidavit of John Otieno Odongo the applicant sworn on 20th December 2013, the undated affidavit of James Aggrey Mwamu and on grounds that the memorandum of claim and other documents relevant to this suit had been prepared but the time for filing suit had lapsed and further that it is in the interest of justice that the orders sought be granted.

The application is brought under Section 1A, 1B and 3A and 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules and Article 159 of the Constitution.

The application was filed by the firm of Mwamu and Company Advocates and prosecuted by M. M. Omondi, Advocate. It was argued before me on 3rd March 2015.

The claimant's case is that he was dismissed from employment in October 2010 but due to lack of funds he was unable to file suit within the 3 years limitation period provided for in Section 90 of the Employment Act.

Mr. Omondi submitted that the application is beaoned on Section 159(1)(a) of the Constitution which states that justice shall be dispensed to all irrespective of status and that the claimant is a man of straw.

Mr. Omondi also relied on Order 50 Rule 6 of the Civil Procedure Rules which provides for power

to enlarge time. He cited the case of **George Musyoki Vs Sarova Hotels [2014] eKLR** in which **Justice Marete** allowed the claimant to file suit out of time on the grounds that labour relations must be given a human face.

In the supporting affidavit the applicant states that it was within his knowledge that he should file his claim within 3 years which had lapsed. That the application is meritorious and that he had come to equity with clean hands.

In the affidavit of James Aggrey Mwamu he deponed that delay was occasioned by the fact that the applicant is a man of straw.

I have considered the application. Section 90 of the Employment Act provides for a limitation period of 3 years. The Limitation of Actions Act provides for extension of limitation period in contractual claims only on grounds of disability, acknowledgement and part payment, fraud, mistake or ignorance of material facts. None of these factors has been pleaded in this case. Impecunity is not a ground for extension of limitation period as both the Civil Procedure Rules and the Industrial Court (Procedure) Rules have elaborate provisions for filing of suits by paupers.

Order 50 Rule 6 cited by Mr. Omondi is not applicable in this case as it relates to enlargement of time fixed under the Rules or an order of a court. Extension of Limitation period is provided for by substantive law and cannot be extended except as provided in the Limitation of Actions Act. Article 159(2) cannot be called in aid of a person who has sat on his rights, nor can equity be invoked as equity does not aid the indolent, but the vigilant only. As the doctrines of equity provides, delay defeats equity and equity follows the law. A party who has failed to claim their rights which as in this case the applicant has deponed he was aware of cannot invoke equity or the Constitution when they have let their right to lapse. The applicant herein has not even attempted to demonstrate that he was a pauper as would be required to be done in applications to sue as a pauper. The mere pronouncement of pauperism is not proof of the same. Pauperism is also not disability under the Limitation of Actions Act.

For the foregoing reasons I find the application without merit and dismiss the same.

Orders accordingly.

**MAUREEN ONYANGO**

**JUDGE**

**10/4/2015**

**Appearances:-**

..... for the claimant(s)

..... for the respondent(s)

CC. Wamache