



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 2311 OF 2012**

**PATRICK OKWIRI OBIMA.....CLAIMANT**

**VERSUS**

**DEL MONTE KENYA LIMITED.....RESPONDENT**

**RULING**

1. The respondent in this matter raised in limine an objection that the claim herein is statute barred, the claimant on the other hand filed an Originating Summons dated 4<sup>th</sup> March, 2015 seeking leave of Court to file a suit out of time.
2. As rightly submitted by Counsel for the respondent, the Originating Summons is an acknowledgment that the suit was filed out of time.
3. Concerning whether it is possible to extend time to commence actions based on employment contracts, section 90 of the Employment Act is not only clear in so far as it states that “no civil action or proceedings based on arising from out of the Act or a contract of service in general **shall** lie or instituted unless it is commenced within three years next after the act complained of. The Act further makes no provision for extension of time. The case law on this issue is very consistent both by the Court of Appeal, while considering the possibility of extending time for actions based on contracts, as well as the decisions by my colleagues in this Court concerning actions founded on the Employment Act or contract of employment generally. It would therefore make no useful purpose to review these decisions to come to the same conclusion. I am however grateful to counsel for the respondent for his good research and analysis of these authorities.
4. In conclusion this suit and the Originating Summons dated 4<sup>th</sup> March, 2015 are hereby declared incompetent and are struck out with the consequence that the preliminary objection succeeds with costs.
5. It is so ordered.

Dated at Nairobi this 19<sup>th</sup> day of June 2015

Abuodha J. N.

Judge

Delivered this 19<sup>th</sup> day of June 2015

**In the presence of:-**

.....for the Claimant

and

.....for the Respondent.

Abuodha J. N.

Judge