



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 167 OF 2014**

**GRACE WANJIRU MWANGI.....CLAIMANT**

**VERSUS**

**OPTICA LIMITED.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 31<sup>st</sup> July, 2015)**

**RULING**

On 06.05.2015 the respondent filed the preliminary objection that the claimant's suit is struck out with costs as it was statute barred as per provisions of section 90 of the Employment Act, 2007.

On 05.06.2015 the claimant filed the notice of motion brought under section 3 of the Civil Procedure Act, Order 50 Rule 6 Order 51 Rule 1 of the Civil Procedure Rules 2010. The claimant prayed for orders:

- a. That the courts do enlarge time to file a memorandum of claim out of time.
- b. That the applicant's memorandum of claim filed herein on 24.12.2014 be deemed as duly filed in time.
- c. That the costs of the application be provided for.

The application acknowledged that the time for filing of the claim had lapsed and if time was enlarged and the suit allowed out of time the respondent would suffer no prejudice. The application was supported by the annexed affidavit of the claimant. The claimant in her affidavit says that the application should be allowed because the respondent has raised a preliminary objection that the suit is time barred and which objection is true.

The court has considered the application and finds that the claimant has not urged any ground to justify the orders as prayed for in the application. The court further finds that there is no dispute that the suit is time barred as per the preliminary objection.

In conclusion the preliminary objection is upheld and the application is dismissed with orders that the claimant shall pay costs of the proceedings as the suit is dismissed with costs.

**Signed, dated and delivered in court at Nyeri this Friday, 31<sup>st</sup> July, 2015.**

**BYRAM ONGAYA**

**JUDGE**