



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 85 OF 2013

BETWEEN

PHILOMENA NTHENYA MWOKICLAIMANT

VERSUS

THOME WA KAHUTI BAR & RESTAURANT.....RESPONDENT

RULING

The Applicant seeks to be granted 14 days, or such other period the Court may deem fit to grant, to file her Statement of Claim.

She worked as a Cashier with the Respondent from January 2002, to 1st October 2009 when her contract of employment was terminated by the Respondent.

She was not paid her terminal dues. She reported the matter to the District Labour officer, who promised to have the Respondent prosecuted on account of failure to pay the Claimant's terminal dues. While she waited, the period of 3 years granted under Section 90 of the Employment Act 2007, expired. The Applicant explains the circumstances of the delay in filing Claim, in an affidavit sworn on 25th November 2013.

The Court Finds and Orders:-

1. The Applicant was not prevented by the intended prosecution of her former Employer through the District Labour Officer, in filing Claim in this Court based on the same facts.
2. The Court has no legal justification in stretching the time limit stated under Section 90 of the Employment Act 2007.
3. The Applicant ought to pursue the prosecution of her former Employer at the District Labour Office, and if necessary pursue her terminal benefits under the Labour Relations Act No. 14 of 2007.

IT IS HEREBY ORDERED:-

- (a) *The application dated 25th November 2013 is disallowed.*
- (b) *The District Labour Officer Nyayo House in Nairobi is directed to immediately proceed with*

the prosecution of the Respondent for non-payment of the Applicant's terminal dues.

(c) The Applicant is at liberty to pursue her terminal dues under the Labour Relations Act No. 14 of 2007.

Dated and delivered at Nairobi this 14th day of February 2014

James Rika

Judge