



REPUBLIC OF KENYA
 IN THE INDUSTRIAL COURT AT NAIROBI
 CAUSE NUMBER 2194 OF 2012

BETWEEN

JEREMIAH MUTUA MUTEA
 CLAIMANT

VERSUS

THE STANDARD NEWSPAPERS LIMITED..... RESPONDENT

Rika J

CC. Leah Muthaka

Mr. Ombati instructed by G. Ombati & Company Advocates for the Claimant

Ms. Kamau instructed by Makhecha & Company Advocates for the Respondent

RULING

1. The Claimant filed his Statement of Claim on 31st October 2012. He seeks general damages for defamation; terminal benefits calculated at Kshs. 18,038,033; certificate of service; costs; and any other relief the Court may be pleased to grant.
2. He avers he was employed by the Standard Limited as an Accountant in 1988. He was charged with the offence of theft by servant in Kibera Chief Magistrate’s Court at Nairobi, Criminal Case Number 1988 of 2004. The Respondent was the Complainant. The Criminal Court delivered its Ruling in March 2011, 8 years after the Claimant was charged.
3. The Respondent terminated the Claimant’s contract of employment on 19th November 2003. On 12th March 2013 the Claimant filed an application under Section 27 and 28 of the Limitation of Actions Act Cap 22 the Laws of Kenya; Order 51 Rule 1 and 4 of the Civil Procedure Rules; Section 1A, 1B and 3A of the Civil Procedure Act and all the enabling provisions of the law. He seeks an order for extension of time within which the Claim ought to have been filed, and for an order that the Court finds the Claim has been filed on time.
4. The Respondent filed an affidavit on 2nd May 2013, sworn by its Senior Legal Officer Caroline Cheruyiot on 30th April 2013. The Advocates agreed to have the application disposed of by way of written submissions. Parties confirmed the filing of their submissions on 3rd July 2013 and the Court

advised them a ruling would be given on notice.

5. The Claimant explains that he was under disability while his criminal case was pending, and he was struggling to make ends meet. The hands of the Court are not tied in granting the prayers sought. The Respondent argues that the Court has no jurisdiction to extend time, and even if it did, the Claimant did not give a satisfactory reason why he delayed filing his claim from 2003.

The Court Finds and Orders:-

6. The Court has no power to extend the limitation of three years in disputes relating to employment contracts, or one year in cases of continuing injury, given under Section 90 of the Employment Act 2007. This provision ousts the application of the Limitations of Actions Act to employment disputes. The Claimant was dismissed in 2003, and even assuming he intends to rely on the repealed Employment Act Cap 226 the Laws of Kenya, his claim would have been barred by the Limitation of Actions Act Cap 22 the Laws of Kenya.

7. There was no reason why he did not file his Claim on time and financial difficulty cannot be a reasonable explanation. The Industrial Court was still in place at the time the dispute arose, and did not charge any legal fees on filing of Claims. It was an Institution put in place specifically to aid workers in pursuit of industrial justice at no cost at all. The Claimant had the option of coming to the Industrial Court free of charge, or as suggested by the Respondent approach the Civil Courts *in forma pauperis*.

8. The prolonged criminal proceedings did not bar the Claimant from pursuing his employment Claim. The employment Claim did not rest on the outcome of the criminal proceedings.

9. The application for extension is technically deficient, as the Claimant invokes the Civil Procedure Act and Rules. The Industrial Court is principally regulated by the Industrial Court [Procedure] Rules 2010. The Civil Procedure Act and its Rules can only apply in the proceedings of the Industrial Court to the extent contemplated by the specific Rules under the Industrial Court [Procedure] Rules 2010, such as Rule 31 on execution of decrees. Secondly the Civil Procedure Act and Rules may apply to the proceedings of the Industrial Court whenever the Industrial Court [Procedure] Rules 2010 are silent on certain procedural aspects. The Judge of the Industrial Court has the discretion of calling on the aid of the Civil Procedure Act and Rules in appropriate circumstances. The Claimant did not demonstrate to the Court that there are no Industrial Court Procedure Rules, which he could have based his application on. The application is technically incompetent, as it is based on the wrong procedural law.

10. The Court is convinced the Claim is time barred; there is no legal basis for extension; and even if there was, no legitimate ground has been established why the Claimant has taken 9 years to approach the Court. ***The application dated 7th March 2013 is disallowed. Consequently the Claim is found to be improperly in Court and is hereby struck out. There shall be no order on the costs.***

Dated and delivered at Nairobi this 12th day of February 2014

James Rika

Judge