

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO 16 OF 2014

KITHURE M'MWENDA NYAGA.....APPLICANT

VS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. The Applicant's application brought by way of Notice of Motion dated 24th February 2014 seeks leave of this Court to file a suit against the Respondent out of time. The application is based on the ground that soon after his dismissal from the Respondent's employment, the Applicant began to suffer from a mental ailment for which he underwent treatment. The application is supported by the Applicant's affidavit sworn on 24th February 2014
2. By letter dated 15th January 2014, the Applicant's doctor has confirmed that his mental status has now stabilized. The Applicant worked for the Respondent from 24th March 1990 until 6th May 2004 when he was dismissed on allegations of insubordination. Soon after his dismissal, the Applicant was hit by a mental illness and was therefore unable to pursue a claim against the Respondent.
3. The Respondent filed Grounds of Opposition on 7th March 2014 stating that this Court lacks jurisdiction to extend time for filing of a claim. The Respondent further states that the Applicant has not adduced sufficient grounds to support his application and that he is guilty of unreasonable delay.
4. The Applicant's application is brought under Sections 4(1) and 22 of the Limitation of Actions Act, Section 12 of the Industrial Court Act, 2011 and Rule 16 of the Industrial Court (Procedure) Rules, 2010.
5. Section 4(1) (a) of the Limitation of Actions Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued.
6. Part III of the Limitation of Actions Act provides specific instances in which time may be extended under the Act. Counsel for the Respondent referred the Court to the case of ***Divecon Limited Vs Shirinkhanu Sadrudin Samani (Civil Appeal No. 142 of 1997)*** in which the Court of Appeal held that Part III does not confer jurisdiction on courts to entertain applications for extension of time with respect to actions arising from contract.
7. In my view, ***Divecon Vs Samani*** addressed itself to situations where the limitation period has actually run out as against a claimant and is therefore distinguishable from the case before this Court. ***Chitty on Contracts (Volume I)*** at page 28-065 states that time begins to run against a claimant who is in a position to commence proceedings but neglects to do so.
8. According to the document dated 15th January 2014 issued by Dr. Kisivuli A.J, Consultant Psychiatrist, the Applicant suffered a disability from June 2005 until 15th January 2014 and was therefore not in a position to bring his claim during this period. The Court therefore finds that time did not begin to run against the Applicant until 15th January 2014 when the doctor confirmed that he had regained normal capacity.

9. The Applicant's application to file his claim out of time is therefore allowed. The costs of this application will be in the cause.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MARCH 2014

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JUDGE

In the Presence of:

.....*Applicant*

.....*Respondent*