



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 27 OF 2014

APOLLO ANDAYI.....APPLICANT

VERSUS

FAIRVIEW HOTEL LIMITED.....RESPONDENT

**RULING**

1. The Applicant herein seeks orders for the extension of time. The Application dated 10<sup>th</sup> March 2014 is supported by grounds on the face of the Motion and the Affidavit of the Applicant Apollo Andayi.
2. Mr. Munoko for the Applicant urged the Court to allow the Application and extend time. Counsel stated that the Applicant was arrested and arraigned in Court in Criminal Case No. 2527 of 2008. The case proceeded and in a Ruling delivered on 2<sup>nd</sup> August 2013 the Applicant was acquitted under Section 210 of the Criminal Procedure Code. The Applicant was dismissed on 15<sup>th</sup> September 2008 and counsel submitted that the Applicant's cause of action against the Respondent expired in September 2011. It was submitted that the Applicant had been in negotiations with the counsel for the Respondent after the conclusion of the criminal trial and it was only on the refusal on their part to admit any claim that the Applicant has come to Court.
3. The Applicant was dismissed while the criminal trial was pending. The claim the Applicant was competent to prefer ought to have been filed in Court within 3 years of the date of accrual of action. Section 90 of the Employment Act 2007 is applicable and any cause of action that accrued from the date of the assent of the Employment Act 2007 has a bar of 3 years.
4. Section 90 of the Employment Act, 2007 provides as follows:

*Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, no civil action or proceedings based on or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.*

5. The Applicant herein was entitled to commence the suit within 3 years. There is no reason why he did not do so. The fact that there was a pending or ongoing criminal process was no bar to the commencement of suit before this Court. He did not require the conclusion of the criminal trial to commence suit. His guilt or otherwise was not the basis of his cause of action. His suit is time barred and the law does not envisage nor does it provide a mechanism for enlargement of time. The Court cannot confer jurisdiction upon itself and must uphold the finding that the Miscellaneous Application before it is thus not fit for grant. I dismiss the Application with no orders as to costs.

It is so ordered.

**Dated and delivered at Nairobi this 9<sup>th</sup> day of April 2014**

**Nzioki wa Makau**

**JUDGE**