



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

MISC. CAUSE NO. 21 OF 2014

RODGERS CHECHE ASHINYA.....CLAIMANT

VERSUS

BROTHER SHIRTS FACTORY LIMITED.....RESPONDENT

RULING

By an ex parte Chamber Summons application dated 24th December 2013 the applicant seeks the following orders.

1. That this Honourable Court be pleased to grant leave to the Applicant to file a suit/institute proceedings against the Respondent out of time.
2. That the costs of this application be costs in the course.

The application is supported by the affidavit of the Applicant Rodgers Cheche Ashinya sworn on 24th December 2013.

In the affidavit he deposes that he was employed by the Respondent on 1st May 1995 on short term contracts that were renewed immediately they expired. In 2007 the Respondent started issuing to him short fixed term contracts. His last contract was to expire on 30th December 2009. He was however unfairly terminated on 4th December 2009. His claim is for Shs. 498,943/- as particularized in the attached Memorandum of Claim. He instructed the firm of T.K Rutto & Company Advocates to pursue his claim. The said firm wrote demand letters to the Respondent. He however changed advocates and instructed Rautta & Company Advocates to pursue the claim. He was dealing with Frankline Okoth whom he later learnt was not qualified and had left the firm without filing his claim. By the time he learnt about this the claim was already statute barred. The failure to file in time was therefore not deliberate but due to circumstances beyond his control.

Extension of Limitation period is provided for under Part III of the Limitation of Actions Act. Claims in employment contracts are however provided for in Section 90 of the Employment Act which provides that such claims must be filed within 3 years. The Employment Act however does not provide for extension of Limitation period which must therefore be done under the Limitation of Actions Act.

The application herein is made under Section 27 of the Limitation of Actions Act, Section 1A, 1B and 3A of the Civil Procedure Act and Order 37 Rule 6(1) of the Civil Procedure Rules and all other enabling provisions of the law. The Civil Procedure Act is not applicable to the procedure in this court, which is

governed by the Industrial Court (Procedure) Rules 2010. Section 27 of the Limitation of Actions Act provides for extension of limitation period only for claims in tort, and not contracts as in the present case.

Even if the court had discretion to grant the prayers, the applicant has not stated in the application when he instructed Franklin Okoth whom he claims held himself out to be an advocate. If the Claimant's dismissal was on 4th December 2009, he should have filed his claim by 4th December 2012 according to Section 90 of the Employment Act.

The application herein is made on 28th February 2014, more than 15 months after the lapse of the limitation period. This delay of 15 months after the lapse of limitation period has not been explained at all. No date is assigned to the time when the Claimant realized his claim was time barred. He has not pleaded disability or fraud, mistake or ignorance of material facts which he could not discover with reasonable diligence, that is attributable to the Respondent.

I find that the claimant has not made out a justifiable case to warrant the extension of limitation period within the limited circumstances provided in the Limitation of Actions Act.

For these reasons I find the application without merit and dismiss the same.

Delivered and signed in open court on 7th day of **April** 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Ms. Musyoka for Applicant / Claimants