



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

MISCELLANEOUS CAUSE NO. 9 OF 2014

PHILIP KORIR.....CLAIMANT

MINISTRY OF LABOUR AND SOCIAL

SECURITY.....RESPONDENT

**IN THE MATTER OF AN APPLICATION BY PHILIP KORIR FOR LEAVE TO FILE A SUIT
OUT OF TIME**

(Before Hon. Justice Byram Ongaya on Friday 23rd May, 2014)

RULING

The application was filed by the applicant Philip Korir in person on 08.05.2014. He prayed that he be granted leave to file suit out of time against the Director of Vocational Training, Ministry of Labour and the Principal Secretary. The court considered that the case would be against the government and directed the applicant to serve the Attorney General. Despite the service, the Attorney General did not enter appearance or file any document. The applicant opted to rely on the documents filed in court and invited the court to consider his application favourably. The application was based on the applicant's supporting affidavit and exhibits filed together with the application.

The applicant's case is that he was employed in 1976 as a Senior Manager in the Youth Development Programme and District Youth Training Officer in charge of Government Youth Development Programmes. On 30.9.2000 and at a time when the claimant had one and half months to the mandatory retirement age, the claimant says he was retrenched from the government services. Immediately after the retrenchment, the claimant fell sick in 2001. The court has perused **exhibit PK 1** and finds that the exhibits show that the claimant has been unwell.

The applicant's main intended claim is that after retrenchment and retirement, the government did not pay him the due terminal dues of Kshs.1,375,825.25, salary for the month of October, 2000 and 14 days worked in November, 2000 being Kshs.9,275.65, and making a total of **Kshs.1,385,100.80**.

By the letter dated 26.01.2001, the Director Industrial and Vocational Training conveyed to the applicant that the salary issue was being considered along with the safety net benefits.

There is nothing on record to show that the government subsequently conveyed to the applicant that it will not pay the salary and the safety net benefits; the terminal dues.

The court has considered the circumstances of this case. If indeed the claimant was retrenched and retired as per the certificate of service and as per the letter acknowledging that he was entitled to salary and safety net benefits, the court finds that failure to pay his terminal dues can only be due to some mistake on

the part of the government. Thus, the court finds that in event of such mistake, the time with respect to the cause of action cannot have started running as envisaged under section 26 (c) of the Limitation of Actions Act, Cap.22.

Accordingly, the court finds that the claimant is entitled to file the suit.

In conclusion, the court finds that the claimant's application is determined with orders:

1. **The claimant is entitled to file the suit to claim his final dues following his retrenchment and retirement from government services.**
2. **The claimant will file the suit in 30 days from today.**
3. **The costs of the application shall abide the outcome of the suit to be filed.**
4. **The claimant will serve this ruling, within 7 days from today, upon the Attorney General, the Public Service Commission and the Cabinet Secretary responsible for Labour for their considered amicable resolution of the claimant's intended claim and as notice to sue.**

Signed, dated and delivered in court at Nakuru this Friday 23rd May, 2014.

BYRAM ONGAYA

JUDGE