



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
MISCELLANEOUS APPLICATION NO 10 OF 2014

EVANS MBUTHIA KIAI.....APPLICANT

VS

DELMONTE KENYA LIMITED.....RESPONDENT

RULING

1. By an *ex parte* Originating Summons dated 14th January 2014, the Applicant seeks leave of the Court to file a claim against the Respondent out of time. The Applicant's application is based on the following grounds:

- a. That the Applicant was an employee of the Respondent for many years and was dismissed on 9th November 2009.
- b. That the Applicant was charged and tried at the Chief Magistrate's Court at Nyeri Law Courts but was acquitted on 24th February 2011.
- c. That due to the criminal case and incarceration thereof coupled with loss of employment, the Applicant was destabilized and was in financial need.
- d. That the delay in filing the claim is inadvertent, excusable and not inordinate.

2. The Applicant's employment with the Respondent is governed by the Employment Act, 2007. Section 90 of the Act provides as follows:

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, no civil action or proceedings based 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.”

3. According to the letter of dismissal dated 12th November 2009, the Applicant was dismissed with effect from 9th November 2009. His claim is therefore well out of the three year limitation period set under Section 90 of the Employment Act, 2007 which gives no discretion to the Court to extend time. The Applicant's application for leave to file his claim out of time is therefore disallowed with no order for

costs.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 6TH DAY OF MAY 2014

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*