



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
MISC. NO. 43 OF 2014

SAMUEL KABIRU WANJIKU.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERALRESPONDENT

RULING

By an originating summons dated 24th April 2014 and filed in Court on 30th April 2014 the applicant seeks leave to file his claim against the Respondent out of time. He states in the application that he was employed by the Kenya Department of National Police Service as a police constable on 27th July 1986 and worked for 22 years up to July 2009 when he was unfairly dismissed on grounds of desertion of duty. It was alleged that he deserted duty for 227 days after sick leave. He appealed against the decision on 10th June 2009 but has not received any communication on the appeal to date.

The Application is supported by the affidavit of the applicant sworn on 24th April 2014.

The police force is excluded from the application of the Employment Act by Section 3 (2) (b) thereof.

Section 26 of the Government Proceedings Act provides for limitation of actions in the following terms:-

26. Limitation of Actions

Nothing in this Act shall prejudice the right of the Government to rely upon any written law relating to the limitation of time for bringing proceedings against public authorities.

Section 3(2) of the Public Authorities Limitation Act provides that no proceedings founded on contract shall be brought against the Government after the end of three years from the date on which the cause of action accrued.

Section 5 of the Act provides for extension of the limitation period in the case of disability, in which case the claim must be filed within 12 months from the date on which disability ceased.

In the present Application the applicant alleges that he has been waiting for the outcome of his appeal. The response had not been received by him as of the date of filing this application.

An appeal does not constitute a disability. There is no provision in the Act for extension of time due to the failure of the Government to take action.

The applicant has not demonstrated that he was suffering from a disability which prevented him from filing his claim within the limitation period and the law does not cloth this court with the power to expand time for filing claim in the circumstances of this case.

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

Orders according.

Dated and delivered at Nairobi this 7th day of July 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Wangare Ndirangu for Claimant

No appearance for Respondent