



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT AT NYERI**

**MISC. APPLICATION NUMBER 73 OF 2014**

**HENRY MWANGI MUNGAI.....CLAIMANT**

**VERSUS**

**KARURI CIVIL ENGINEERING LTD .....RESPONDENT**

**RULING**

1. By ex-parte summons dated 23<sup>rd</sup> July, 2014, the applicant herein seeks leave of the Court to file a suit out of time.
2. In the supporting affidavit to the application, the applicant depones that he instructed his then advocates Ms. Wachira Nderitu to file a suit against the Respondents on his behalf and that on various occasions he visited the said advocates' law firm and was informed a case had been filed on his behalf and that the same was about to be set down for hearing. He came to learn early in the year that the said advocates did not actually file his case.
3. He further deposes that he was diligent enough to file the suit but the failure by his counsel to file the suit on time was beyond his control. The applicant urged that the Court had jurisdiction to grant the order he was seeking.
4. Court's generally have jurisdiction donated by Section 27 of the Limitation of Actions Act to extend time to file civil claims out of the limitation period prescribed by law.
5. Claims arising out of the employment contracts are governed by the Employment Act and must be filed within three years from the date of accrual of the cause of action. 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 of or in case of continuing injury or damage within twelve months next after cessation thereof.*”**
6. Section 4 of the Limitation Actions Act sets limitation period for several actions founded on tort or contract. Termination of employment claims are actions founded on contract. Ideally, were it not for Section 90 of the Employment Act, they ought to be brought within six years from the date of the accrual of the cause of action. This therefore means that the import of Section 90 is to exclude claims arising out of employment disputes from the ordinary contractual claims whose limitation period is six years.

7. This section however does not mean that a person who for good cause was unable to file a suit within the stipulated period cannot benefit from extension of time permissible under Section 27 of the Limitation of Action Act.

8. The applicant herein has deponed that he instructed an advocate to file a suit on his behalf and was under the belief that the same was filed and what remained was to set the suit down for hearing. The applicant later came to learn no such suit was filed. Whereas the conduct of his advocate is despicable and could easily land him in a suit for professional negligence, this must not be allowed to shut out the Claimant from accessing the Court to agitate his claim. In the circumstances the Court allows the application and directs that the applicant files his claim within twenty one days of this order.

9. It is so ordered.

**Dated at Nairobi this 25<sup>th</sup> day of November 2014**

**Abuodha J. N.**

**Judge**

Delivered this 25<sup>th</sup> day of November 2014

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge