



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT MOMBASA
MISCELLANEOUS APPLICATION NUMBER 17 OF 2014
BETWEEN
FRANCIS MAKORANI DDAIDO.....APPLICANT
VERSUS
BANK OF INDIA.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Maina for Ex-Parte Applicant

RULING

1. The *Ex-Parte* Applicant seeks leave of this Court, to institute Suit against the Bank of India.
2. He was employed by the Bank of India. He left employment through Voluntary Early Retirement, sometime in 1998. He disputes the lawfulness of his exit, and filed a Claim at the High Court in Mombasa, registered as Civil Suit Number 164 of 2005.
3. The suit has not been heard and determined.
4. In the *Ex-parte* Application, the Applicant states that the best forum and/or Court to address employment issues, is the Industrial Court. This is so because the Constitution of Kenya has re-established the Industrial Court, as such an exclusive forum.
5. The *Ex-Parte* Applicant swore an affidavit in support of the Application ,on an unstated date, which apart from being technically unacceptable, is not clear on certain issues: it does not state why the Claim filed in the High Court in 2005 is still pending; there is no indication what steps the Applicant has taken to prosecute that Claim; it is not clear if the Applicant seeks to transfer the High Court Claim, and why he has not asked for transfer from the High Court; and he has not revealed in his Application why it is necessary to file a fresh Claim in the Industrial Court, while the transfer route has not been attempted or exhausted. The Applicant appears not clear also, on whether he should have some issues dealt with by the Industrial Court and others left to the High Court. It would be inappropriate for the Industrial Court to issue Orders which relate to proceedings which are pending at the High Court.

6. He invokes Section 27 and 28 of the Limitation of Actions Act Cap 22 the Laws of Kenya. The termination of employment took place in 1998. This Court has no power in extending time to the Applicant to bring a fresh dispute which arose in 1998. His best shot is to go back to the High Court and seek transfer and continuation of proceedings, rather than engage in filing of a fresh Claim and court the Law of Limitation of Time.

IT IS ORDERED:-

(a) *The Ex-Parte Application dated 25th September 2014 is rejected.*

Dated and Delivered at Mombasa this 14th day of November 2014.

James Rika

Judge