



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**

**CASE NO.230 OF 2012**

***(Before:D.K.N.Marete)***

**AGNES NGENDO WANYOIKE.....CLAIMANT**

**-VERSUS-**

**KENYA PIPELINE COMPANY LTD.....EMPLOYER/RESPONDENT**

**RULING**

This application by way of Notice of Motion dated the 22nd April, 2013 seeks the following orders;

1. **THAT** this Honourable Court be pleased to order the claim herein be struck out with costs to the Employer/Respondent on account of being statute barred.
2. **THAT** the costs of this application be borne by the claimant.

and it is grounded on

- a. **THAT** the claimant was summarily dismissed on 2nd December, 2004 for reasons more clearly articulated in the response to the memorandum of claim.
- b. **THAT** the claimant exercised her right of appeal and the respondent granted her audience on 7th February, 2005.
- c. **THAT** the claimant's appeal to the summary dismissal was eventually dismissed on 31st March, 2005 after consideration of the minutes of the meeting held on 7th February, 2005.
- d. **THAT** since 31st March, 2005 up to 20th February, 2013 when this claim was filed the claimant has been indolent and has not taken any steps regarding the summary dismissal.
- e. **THAT** equity aids the vigilant not the indolent.
- f. **THAT** entertaining this claim would be against the express provisions of Article 159(2) (b) of the Constitution and section 90, Employment Act, 2007 as read with Section 4(1) Laws of Limitation Act.
- g. **THAT** the claimant herein has relied on documents of suspect validity/authenticity and as such the claim should be struck out.

h. **THAT** any further grounds as may be advanced during the hearing.

The application is supported by the affidavit of Flora Okoth sworn on the same date the gist of the application is that the claim be struck out with costs on account of being statute barred.

The employee/respondent on the other hand opposes the application on grounds that upon unfair dismissal from employment he suffers a depression and has been bed ridden and unwell. He should therefore benefit from the new found constitutional principle against technicalities and be allowed to pursue his claim despite the limitation of actions by virtue of time.

Further, the respondent submits that the respondent/applicant has not demonstrated that he would suffer prejudice by the claim as instituted in court.

The matter came for hearing on 20th May, 2013 when Mr. Wambugu for the respondent/applicant submitted that the issue is the application dated 22nd April, 2013 filed contemporaneously with a Notice of Preliminary objection dated 25th February, 2013 and filed on 1st March instant. The facts of the matter are that the claimant was dismissed on 31st March, 2005 and her appeal against such dismissal also dismissed on 31st March, 2005. This court therefore does not have jurisdiction to entertain the claim for being time bared.

The claimant/respondent in opposition to the application does not explain the reasons for delay and no demonstration of sickness is offered. The opposition is also based on selective interpretations of the Constitution of Kenya, 2010 and therefore the claim is undue and should be dismissed.

The claimant/respondent admits the time bar but submits that the Industrial Court Act, 2011 came after the law of limitation and the Employment Act and therefore oust the application of the other laws on limitation of actions.

He further submits that the claimant has at all material times suffered a depressed and also that the court should dwell on substantive law and allow the pursuit of the claim by his client. He in the penultimate seeks leave to file an application out of time.

I have considered the submissions of the parties and the authorities presented in support of the parties cases. The application must be allowed on grounds of limitation and this is not debatable. The law is explicit on issues of limitation of actions and the claimant/respondent is so aware and need not belabor on the non application of the same. He also prays for leave to apply for filing of the claim out of time should this application be disallowed.

I allow this application and urge the claimant/applicant to pursue his case through any or all legal avenues available to him in the circumstances.

The costs of this application be borne by the grievant/respondent.

**Dated, delivered and signed the 4th day of June, 2013.**

**D.K.Njagi Marete**

**JUDGE**

**Appearances**

**Mr. Wambugu instructed by Lilian & Koech Associates for the respondent/applicant.**

**Mr. Nyangito instructed by Nyangito & Company Advocates for the claimant/respondent.**