



**REPUBLIC OF KENYA**  
**INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**MISC. APPLICATION NO. 26 OF 2013**

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

**PRAXEDES ADHIAMBO OTIENO.....APPLICANT**

versus

**KENYA BROADCASTING CORPORATION.....RESPONDENT**

**RULING**

This is an application by way of a Notice of Motion dated 21st May, 2013 under section 12 of the Industrial Court Rules. It seeks the following orders;

1. That the applicant be granted leave to file the statement of claim out of time.
2. The claimant to file her statement of claim within fourteen (14) days or such other period the Honourable Court may deem fit and just to grant.
3. That the Honourable Court do grant such orders and reliefs the Honourable Court may deem fit and just to grant.
4. That costs of this application be costs in the cause.

And is based on the following grounds;

1. The applicant was employed by the respondent as a Chief Accountant and rose through the ranks to the position of Procurement Manager.
2. The claimant worked with due diligence and faithfulness for the respondent until on 30th October, 2009 when she was retired under the 50 year rule without any notice.
3. The retirement of the applicant was done without according to her the right to show cause why she should not be retired as required by the principles of natural justice.
4. The applicant after her retirement made several appeals to the respondent to have her reinstated to her previous employment but the respondent has been making false promises that it will call for the Board of Directors to look into the claimant's issue.
5. The applicant while awaiting for the respondent's response and action the period for filling a claim before the Honourable Court expired.
6. The applicant also travelled out of the country to attend to her ailing mother and took some

considerable time which also contributed to the delay in filing the claim.

7. That it will be for the best interest of justice for applicant to be allowed to file her claim out of time as the respondent will not be prejudiced in any way.

The applicants case is that she was employed by the respondent on 7th March, 1994 until the 30th October, 2009 when her services were terminated on account of early retirement upon reaching fifty (50) years, (early retirement under 50 years rule). She contested and still contests the retirement as being irregular and unlawful.

The applicant appealed against this decision and also made various enquiries on the matter and was told that the matter would be considered which has not been done to date. The appeal and subsequent written follow ups have not been responded to by the respondent. This dilly dallying by the respondent caused the delay in filing of a claim. The delay was also caused by the appointment of a new board which was not readily done or forthcoming.

Another ground for delay is that the applicant was out of the country for some time to visit and attend to her ailing mother – exhibit 4 and 5.

In evidence, the applicant produces a letter of appeal and travel and medical documents in support of her claim. Whereas the letter of appeal is appropriate, there is no further evidence of communication between the applicant and the respondent on the subject. The applicant does not demonstrate a case of due diligence in the pursuance of her matter. The documentation for travel and medical is also not fool proof. It is not indicative of the relationship between the applicant and the persons named in the medical documents.

The applicant was retired on 30th October, 2009 tending to four years to date. The law of necessity requires that claim under the law of employment be effected and filed within three years; Section 50, Employment Act, 2007. She has defaulted by about seven months from this deadline and expiry period.

The claim appears realistic and issues substantial. Inasmuch as the applicant does not come out clearly on the grounds for delay, I award her the benefit of doubt and find in her favour. This upholds the principle of balance of probabilities and or preponderance of evidence. In any event, an award of the prayers and orders sought does not in any way prejudice the respondent who is a public body and therefore expected to accommodate public good and policy.

I grant the orders as prayed in terms of prayer numbers 1, 2 and 4 of the application as follows;

1. **THAT** the Applicant be and is hereby granted leave to file statement of claim out of time.
2. **THAT** the claimant be and is hereby granted leave to file her statement of claim within fourteen (14) days.
3. **THAT** costs of this application be on cause.

Dated, delivered and signed the 26th day of July, 2013.

**D.K.Njagi Marete**

**JUDGE**

**Appearances:**

1. Mr. Nyabena instructed by Nyabena & Company Advocates for the applicant.