



REPUBLIC OF KENYA
INDUSTRIAL COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 34 OF 2012

(Before D.K.N. Marete)

WILLIAM TONY ANG'WEYA.....APPLICANT

versus

SAROVA HOTELS.....RESPONDENT

RULING

The matter before court is an application by way of a Notice of Motion dated 15th November, 2012 and supported by the supporting affidavit of William Tony Ang'wea to claimant/applicant sworn on the same date. It seeks the following orders;

1. **THAT** this Honorable Court be pleased to grant leave to the applicant to file claim out of time.
2. **THAT** the costs of this application be provided for.

It is based on grounds;

- a. That the loss and damages so far suffered as result of the illegal dismissal are grievous and should this application not be allowed, the applicant/claimant shall suffer further irreparable loss and damages.
- b. That the reason for delay in filing the suit within time was beyond the applicant/claimant.
- c. That the intended respondent shall not be prejudiced if the application is allowed.

The claimant's case is that in the year 1992, he was employed by the respondent but in 1997, this employment was illegally terminated.

The claimant/applicant further submits that in the same 1997, he instructed the law firm of Onyango Ongeche & Company Advocates to pursue the matter on his behalf. At this time the claimant relocated to his rural home and communicated to his advocates only on phone. Despite several pursuits of the prosecution of the matter and assurances from counsel and the law firm, this was not to be and therefore occasioning delay in the matter. The advocate unfortunately thereby passed on before he could pursue the matter for the claimant/applicant.

The claimant/applicant also avers that some of this delay was occasioned by ill health on his part and even interactions with the defendant on the claim which lapsed on 2nd December, 2011 when the defendant 'cleared' off the claimant. This clearance marked the close of negotiations *inter partes* on the

subject.

The claimant in the penultimate argues that the grant of leave by court would not in any way prejudice the respondent.

The matter came for hearing on 20th June, 2012 and counsel for the applicant laid down the following grounds for the application;

- That the claimant/applicant made a second appeal dated 2nd December, 1997 which has not been responded to.
- The applicant employed the services of Onyango Ongeche, Advocates (now deceased) who promised to effectively deal with the matter either through an out of court settlement or court but this was never done.
- A clearance with the respondent was not allowed until 2nd December, 2011 – see exhibit 8 of the supporting affidavit.
- The respondent never indicated the last date of services on the clearance nor the amount of terminal dues or even signed the letter of termination.
- The claimant did not know that his case was not being considered all the up to 2nd December, 2011.
- No payment was made with the clearance.
- The claimant has been ailing and suffered depression. He has always been willing to pursue his matter.
- The respondent would not in any way be prejudiced by a grant of this application.

I have considered the application and the grounds thereof and find that this is a deserving case for extension of time to file the claim. Under all circumstances the respondent shall not be prejudiced and would in any event be able to defend case. Two, the circumstances leading to expiry of the limitation period were dictated and attributed to circumstances beyond the control of the applicant. Some can even be traced on the respondent's inertia, bureaucracy and lack of diligence. The claimant/applicant should not therefore be hanged for these.

I therefore feel inclined to allow the application. The applicant shall now file his claim within thirty (30) days from today. The costs of this application shall be on cause.

Dated, delivered and signed the 25th day of July, 2013.

D.K. Njagi Marete,

JUDGE.

Appearances:

1. Ms. Nyang' instructed by S.J. Nyang' & Company Advocates for the claimant/applicant.