



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 1513 OF 2011**

**BETWEEN**

**FRANCIS MWAURA MBOCHE .....**  
**.....CLAIMANT**

**VERSUS**

**NACICO CO-OPERATIVE SAVINGS**

**&**

**CREDIT SOCIETY .....**  
**.....RESPONDENT**

*Rika*

*J*

CC. Mr.

Kidemi...

*Mr. Okenyo holding brief for Kimani instructed by Kimani Richu And Company Advocates  
for the Claimant*

*Mrs Oketch instructed by Hamilton Harrison and Mathews, Advocates for the Respondent*

**RULING**

1. This dispute comes up for ruling on a preliminary legal challenge made by the Respondent, on the validity of the Claim. The Claimant was retired in December 2007, and filed this Claim on 6<sup>th</sup> September 2011. He seeks retirement dues of 30 days' salary for each of the 29 years he completed in service.
2. The Respondent argues that the Claim was filed outside the 3 year statutory limitation allowed under Section 90 of the Employment Act 2007. It is time-barred. The Claimant explains that he was in communication with his employer, on the payment of his retirement benefits, and it would not be fair if this Claim was defeated on the ground that it was filed late. The ends of justice would be defeated. The Limitation of Actions Act Cap 22 the Laws of Kenya allows the Court to extend time.

3. The Court is persuaded that the Claim was filed outside the time given under Section 90, and is time barred. The wording of Section 90 of the Employment Act 2007 does not leave this Court with any room to extend time in the manner suggested by the Claimant. He came to Court 4 years after his retirement, and did not in any case, make any application for extension of time. ***The Court is satisfied that the preliminary objection is merited. The Claim is dismissed with no order on the costs.***

**Dated and delivered at Nairobi this 17<sup>th</sup> day of September, 2013**

**James Rika**

**Judge**