



Case Number:	Miscellaneous Civil Application 11 of 2017
Date Delivered:	19 Dec 2017
Case Class:	Civil
Court:	Employment and Labour Relations Court at Kisumu
Case Action:	Ruling
Judge:	Mathews Nderi Nduma
Citation:	Silvanus Ombati Bongoye v National Police Service Commission [2017] eKLR
Advocates:	Mr. S. M. Sagwe for Applicant Ojwang for Respondents
Case Summary:	-
Court Division:	Employment and Labour Relations
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT KISUMU

MISC. CIVIL APPLICATION NO. 11 OF 2017

(Before Hon. Justice Mathews N. Nduma)

SILVANUS OMBATI BONGOYE.....APPLICANT

= VERSUS =

NATIONAL POLICE SERVICE COMMISSION.....RESPONDENT

R U L I N G

1. The applicant seeks the court to extend the time within which the applicant may file his claim against the Respondent.

2. It is not in dispute that the applicant was dismissed from Administration Police Force on 15th August, 2005.

3. The applicant appealed the dismissal to the Deputy Inspector General - Administration Police and the Appeal was disallowed. A second Appeal was also disallowed.

4. In terms of section 4 of the Limitation of Actions Act, Cap 22 of the Laws of Kenya the suit ought to be filed within six (6) years from the date the cause of action arose. Section 11 of the Act does not allow extension of time in respect of matters founded on contract.

5. Furthermore, Section 3(2) of the Public Authority Limitation Act, Cap 39 provides –

“No proceedings founded on contract shall be brought against the Government or a Local Authority after the end of three years from the date on which the cause of action accrued.”

6. The application was filed on 26th April, 2017 more than sixteen (16) years from the time the cause of action arose.

7. There is no acceptable Legal or factual justification disclosed by the applicant to warrant opening of this matter after such an inordinate delay and in violation of clear statutory limitation provisions.

8. In **Gathoni Vs Kenya Co-operative Creameries Limited Civil Application No. 122 of 1981 Potter J** observed in obiter that:

“The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

9. In **Divecon Limited v Samani [1995-1998] EA 48**, at 54 the Court of Appeal while interpreting section

4(1) of Cap 22 stated that the provision was clear no one shall have the right or power to bring an action after the end of six years from the date on which a cause of action occurred in an action founded on contract. The court added –

“The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action ... A perusal of part III shows that its provisions do not apply to actions based on contract. In the light of these clear statutory provisions it would be unacceptable to imply as the learned Judge of the superior court did, that the wording of section 4(1) of the Limitation of Actions Act (chapter 22) suggests a discretion that can be invoked.”

10. Accordingly, this court lacks powers to entertain this application and discretion to extend the limitation period of six (6) years placed on causes founded on contract under section 4(1) of Limitation of Actions Act, Cap 22 of the Laws of Kenya.

11. The application is dismissed with no orders as to costs.

Judgement Dated, Signed and Delivered this...19th. day of ...December, 2017

MATHEWS N. NDUMA

JUDGE

Appearances:-

Mr. S. M. Sagwe for Applicant

Ojwang for Respondents

CC. Chrispo Aura



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