



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 43 OF 2018

JACINTA M. NGUTHU.....CLAIMANT

VERSUS

JUZAR GULAM HUSSEIN YUSUF ALL.....RESPONDENT

RULING

1. This ruling is triggered by a preliminary objection raised by the Respondent by notice dated 12th February 2019 and filed in court on 15th February 2019.

2. The basis of the objection as stated by the Respondent is that the Claimant's claim is statute barred by dint of Sections 4(1) of the Limitation of Actions Act and Section 90 of the Employment Act.

3. From the pleadings filed by the parties, it evident that the cause of action arose after the enactment of the Employment Act, 2007. The applicable limitation law is therefore Section 90 of the Act which provides as follows:

90. Limitations Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

4. For some reason which was not clear to the Court, the Claimant chose not to respond to the objection. Nevertheless, the objection is premised on a point of law and this Court will determine it a such.

5. In the written submissions filed on behalf of the Respondent, reference was made to the decision in ***G4S Security Services (K) Limited v Joseph Kamau & 468 others [2018] eKLR*** where the Court of Appeal cited the following definition of a preliminary objection found in the celebrated case of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors [1969] EA 696***:

“A preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

6. In her Memorandum of Claim dated 22nd January 2018 and filed in court on 24th January 2018, the Claimant pleads that she was summarily dismissed on 5th January 2015. This then would have been the accrual date of the cause of action.

7. In light of the provisions of Section 90 of the Employment Act, the Claimant's claim ought to have been filed by 4th January 2018. The current claim was therefore filed out of time and the Court has no jurisdiction to entertain it.

8. In the circumstances, the objection taken by the Respondent succeeds and the Claimant's claim is struck out with no order for costs.

9. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 23RD DAY OF MAY 2019

LINNET NDOLO

JUDGE

Appearance:

Mr. Hezron Onwong'a (Union Representative) for the Claimant

Mr. King'ang'ai for the Respondent