



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NUMBER 2198 OF 2016**

**DOMINIC MWENDO MWANZIA.....CLAIMANT**

**VERSUS**

**WELLS FARGO LIMITED.....RESPONDENT**

**RULING**

1. The respondent raised objection in limine that the court lacked jurisdiction to hear the suit on the main ground that by virtue of section 90 of the Employment Act the claim is time barred.
2. Section 90 of the Employment Act provides as follows:

*“Notwithstanding the provisions of section 4(1) of the Limitations Actions Act, 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”.*
3. This section does not permit extension of time to bring actions founded on the Act or contract of employment after expiry of three years from the date of accrual of the cause of action or in the case of continuing injury after twelve months from cessation thereof.
4. The claimant was dismissed from service on 22<sup>nd</sup> November, 2010 on the grounds that he was suspected of involvement in theft on the night of 5<sup>th</sup> November, 2010 as a result of which he was charged with a criminal offence. He was later on 14<sup>th</sup> August, 2015 acquitted of the charges for lack of evidence. This claim was filed on 27<sup>th</sup> October, 2016.
5. This is obviously outside the time limited by section 90 above. The fact that the claimant was undergoing prosecution did not prevent him from bringing an action for wrongful dismissal within three years after dismissal. The preliminary objection to this extent succeeds and the suit is hereby dismissed to that extent.
6. Concerning claim for malicious prosecution the court having been dispossessed of jurisdiction by virtue of Section 90 of the Act cannot entertain this claim alone. The claimant shall have the liberty to move the court to transfer this aspect of the claim to an appropriate court subject to the law of limitation.
7. It is so ordered.

Dated at Nairobi this ..... day of .....2017

**Abuodha J. N.**

**Judge**

Delivered this 28<sup>th</sup> day of April 2017

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**