



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1150 OF 2013

EUNICE CHEBUKWA WANJALA APPLICANT

VERSUS

KENYA COMMERCIAL BANK LTD. RESPONDENT

Mr. Dola Indidis for the Claimant/Applicant

Federation of Kenya Employers for the Respondent

RULING

1. The suit was filed on 22nd July 2013, via a memorandum of claim dated 19th July 2013.

The Claimant was an employee of the Respondent Bank from 25th May 1974 until the 12th June 2004 when he was dismissed from employment.

She states the dismissal was wrongful and unjustified and claims service pay for 30 years in the sum of 2,096,880/=; notice of termination in the sum of Kshs. 209,688; acting allowance in the sum of Kshs. 12,191,986 and compensation for unlawful dismissal.

2. The filing of the suit was not preceded by an application for grant of extension of time.

A preliminary objection was noted on 21st August 2013 stating that the Court has no jurisdiction to entertain this suit nor grant the relief sought because in terms of *Section 4(1)* of the Limitation of Actions Act Cap 22 of Laws of Kenya, the same is time barred and the Court lacks discretion to enlarge the limitation period.

3. I have perused the various authorities of this Court and the High Court and in particular relying on the decision of the Court of Appeal at Nairobi in **Divecon Ltd. Vs. Samani, [1995 - 1998] 1 EA 48 at 49** which found:

“the words of *Section 4(1)* were clear beyond any doubt and meant that no one had the right or power to bring an action founded in contract after the end of six years from the date on which the cause of action occurred.”

Find that this application has no merit as the suit was brought over nine (9) years since the cause of action arose.

4. That for the purpose of labour dispute, the pre-trial mandatory conciliation procedure under the erstwhile *Trade Disputes Act, Cap 234* of the Laws of Kenya, which this Court has found to constitute commencement of the suit for purposes of limitation is not applicable in circumstances of this suit because none was embarked upon within the six (6) years period from the date the cause of action arose.

5. The fact that the Claimant faced criminal charges in Criminal Case No. 1114/2002 in which she was initially convicted and fined Kshs. 100,000/= or twenty four months imprisonment in the alternative but was acquitted upon appeal in Appeal No. 43 / 2002 on 21st February 2013 does not constitute a waiver of the provisions of *Section 4(1)* of the Limitation of Actions Act which governed Employment matters prior to the enactment of the *Employment Act No. 11 of 2007*.

6. Accordingly, the Court lacks jurisdiction to entertain this suit and the same is dismissed.

Dated and delivered at Nairobi this 4th day of April, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE