



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL APPEAL NO. 52 OF 2012**

*(An appeal arising from the Judgment and Decree of the Chief Magistrate's Court  
in Kakamega Civil Suit No. 351 of 2011 delivered on the 16th day of May, 2012)*

**RAJAB SHIRENYA WASHIALI.....APPELLANT**

**VERSUS**

**MUMIAS SUGAR CO. LTD.....RESPONDENT**

**JUDGMENT**

This is an appeal from a ruling of the Chief Magistrate's court.

On 15/5/12 The Chief Magistrate made a ruling in Kakamega CMCC No. 351 of 2011. The ruling arose from a Preliminary Point of Objection raised under Section 90 of the Employment Act of 2007. It was argued that, though previously the limitation period for a cause of action arising from an injury suffered in an employment contract was six (6) years, the Employment Act 2007 under Section 90 reduced that period to three (3) years.

The learned magistrate came to the conclusion that Section 90 of the Employment Act 2007 reduced the limitation period in cases of breach of contract to three (3) years. The learned magistrate conclude that the accident herein having been coursed purportedly in the course of employment on 1/7/2007, and the suit having been filed on 16/9/2011, the suit was consequently statutory barred. That the suit should have been filed before the lapse of the limitation period of three years, and therefore the court struck out the suit with costs. Therefrom arose this appeal.

The appellant filed a Memorandum of Appeal on 14/6/12. The grounds of appeal are as follows -

- 1. The learned trial magistrate erred in law and fact in striking out the appellant's suit.**
- 2. The learned trial magistrate erred in law and fact by making a finding that Section 90 of the Employment Act 2007 Act 11 of 2007 was applicable herein.**
- 3. The learned trial learned magistrate erred in Law and Fact by giving Section 90 of the Employment Act, 2007 – Act No. 11 of 2007 a retrospective operation in view of the date when the said Act came into operation and the date of the applicant's injury.**

Both the Appellant's counsel Abok, Othiambo & Co. advocates and the respondent's counsel, Akwala & Company relied on written submissions filed.

This is an appeal from the decision of the Chief Magistrate in a ruling on a point of law. It is not disputed that the accident occurred on 1/7/2007. It is also not disputed that the interpretation of the law before the coming into effect of the Employment Act 2007, was that where an accident occurs in the course of employment, the claim for the injuries arises from breach of contractual terms of service, therefore the limitation period was six years. This is what the Court of Appeal held in the case of **Kenya Cargo Handling Services Ltd. -vs- Ugwang [1985] KLR 538**, which was cited to the learned magistrate.

After the coming into effect of the Employment Act 2007, Section 90 thereof reduced the period of limitation to three years. The said section was cited before the learned magistrate. It states as follows -

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

The Employment Act of 2007, thus changed the previous position of the Limitation period for certain claims arising from employment contracts. It specifically puts a limitation period of three years. The Employment Act 2007 was accented to on 22/10/2007 which was some months after the occurrence of the accident. It came into effect on 2<sup>nd</sup> June 2008. In my view therefore the Act did not apply to the accident in question herein. It was not effective when the accident occurred on 1/7/2007. It could not apply retrospectively. It was a mistake for the learned magistrate to apply that law retrospectively. The Employment Act of 2007 only applies to accidents occurring in the cause of employment as from 2/6/2008 when it came into effect and thereafter. It did not apply to any accidents that occurred before the 2/6/2008.

The above being the case, I find that the appeal has merits. I allow the appeal and set aside the ruling of the learned magistrate. I order that the case proceeds to hearing from where it had reached in the trial court, before the ruling herein now set aside was delivered.

I award the costs of this appeal to the appellant.

***Dated and delivered at Kakamega this 3<sup>rd</sup> April, 2014***

**George Dulu**

**J U D G E**