



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 5 of 2007

CLATUS ODHIAMBO MACOWENGA.....PLAINTIFF

VERSUS

KENYA CIVIL AVIATION AUTHORITY.....DEFENDANT

R U L I N G

The application is by the Defendant brought by way of a Chamber Summons under Section 7E of the Civil Aviation Act and Order VI Rule 13 (1) (b), (d) and 16 of Civil Procedure Rules. It seeks the dismissal of the Plaintiffs case with costs. There is one ground given on the face of the application to support it, which is: -

1. The Plaintiff filed by the Plaintiff is time barred as it was not filed within one year as required by Section 7E of the Civil Aviation Act Chapter 394 of the Laws of Kenya. The Plaintiff's appeal was dismissed on 6th January, 2006 and the limitation period therefore expired on 7th January 2007. The Plaintiff was filed on 11th January 2007.

There is an affidavit sworn in support of this application by **ZADARACK ACHOKI**, the Acting Corporation Secretary of the Defendant Authority.

The Application is opposed. The Plaintiff has filed a replying affidavit dated 15th February, 2008 in which the Plaintiff deposes that the suit was filed within time.

I have considered the application, together with the affidavit by both parties and the submission of both Counsel. The issue is a very simple one, which is whether this suit was filed within time as provided under the **Civil Aviation Act, Cap 394** Laws of Kenya.

This suit was filed on 11th January, 2007. The cause of action, according to the Plaintiff, arose on 6th January, 2006, when the Defendant rejected the Plaintiff's appeal from a decision to terminate his services reached on 20th April 2005.

The Defendant argues that the Act allowed the Plaintiff to file the suit challenging the dismissal, by 6th January, 2007, since, according to the Defendant, time started running from 6th January 2006 when the appeal was dismissed. **Mr. Gichuhi** for the Defendant has cited three cases to support his contention as follows: -

1. **Ogolla & Others vs. KPA Mom HCCC No. 538 of 1994** where **WAKI, J**, (as he then was) found that where a suit was instituted without prior compliance with mandatory statutory provisions, (in that case **Section 66** of **KPA Act Cap 391**) the Court had no jurisdiction to entertain it.

2. **Ochieng vs. KPA Mom HCCC No. 227 of 1997 also by Waki, J.** as he then was, to same effect as **Ogolla's case**, supra.

3. **IGA vs. Makerere University [1972] EA 65** where **MUSTAFA JA**, held.

“A Plaintiff barred by Limitation is barred by Law and must be rejected even though an interlocutory judgment has been entered.”

The Respondent was represented by **Mr. Otieno**. The Plaintiff's contention was that the cause of action arose on 13th January, 2006, when the letter communicating the dismissal of the Plaintiff's appeal was received by him and not from the date of the said letter.

The Plaintiff was dismissed from the service of the Defendant Authority, therefore, the **Civil Aviation Act** is the applicable law.

Section 7E (b) of the **Act** stipulates: -

“Where an action or other legal proceeding is commenced against the Authority for any act done in pursuance or execution or intended execution of this Act or any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act, or of any such duty or authority, the following provisions shall have effect:

(b) the action or legal proceedings shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, omission or default complained of or in the case of a continuing injury or damage, within six months next after the cessation thereof”.

The issue of limitation goes to the jurisdiction of the Court. Assessing from the submissions by the Counsels to this case, the bone of contention is when time for filing the suit started running, whether from the date the decision to dismiss the appeal was made or from the date the Plaintiff received the letter informing him of the decision of the dismissal of his appeal. The answer can be found in the Act. **Section 7E (b)** of the Act stipulates that the ***“legal proceedings shall not lie or be instituted unless it is commenced within 12 months next after the act, ...complained of”***.

It is not in dispute that the Plaintiff's cause of action arose on the date the appeal against his summary dismissal was rejected which is 6th January, 2006. The provisions of **Section 7E** of the Act do not contemplate any other form of computation of time except that of “12 months after the act complained of”. It does not give any exemptions to the general rule. That, in my understanding of the said provision, clearly means that computation of time from the date of service with the notice of dismissal was not contemplated, and that it was never the intention of the drafters of the Act to provide an exception clause to this section. It is therefore, not acceptable or excusable that because the Plaintiff received his letter six days after the decision was reached then time should start running from the date of receipt of the notice. That is more so especially where, as in this case, the Plaintiff had more than 11 months within which to institute these proceedings. The Plaintiff was indolent and allowed time to run before rushing to court to file the suit in total disregard of the provision of limitation provided in the Act.

The suit as filed is incompetent and the Court has no jurisdiction to entertain it. In the circumstances, I dismiss the Plaintiff's argument, allow the application as prayed with costs both of the application and the suit.

Dated at Nairobi this 12th day of March, 2008.

LESIT, J.

JUDGE

Read, signed and delivered, in the presence of:

N/A Mr. Gichuki, Advocate for the Defendant

N/A Mr. Otieno, Advocate for the Respondent

LESIT, J.

JUDGE