



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1264 of 2006

SAMUEL OKECH KAWERE.....PLAINTIFF

VERSUS

MINISTRY OF LABOUR &

HUMAN RESOURCES DEVELOPMENT.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

1. The plaintiff filed suit on November 30, 2006 in which he alleged that the 1st defendant wrongfully retired the plaintiff from the Public Service on the pretext of abolition of office, and that at the time of such retirement, the plaintiff who was only 31 years old had worked for the 1st Defendant for 12 years and that the 1st defendant was in breach of the contract of employment and that it acted in bad faith. The plaintiff sought the following reliefs against the two defendants jointly and severally:-

- (a) *An order directing the Defendants to reinstate the plaintiff back to his employment***
- (b) *Costs of this suit***
- (c) *Interests at court rates***
- (d) *Any other alternative relief this Honourable Court may deem fit to grant***

2. The two defendants filed a joint statement of defence in which they not only denied the plaintiffs allegations but they also averred at paragraph 9 of the defence that no notice had been served upon the AG and put the plaintiff on notice that they would raise a Preliminary Objection to the entire suit under Section 13A of the Government Proceedings Act, Cap 40 Laws of Kenya. At paragraph 8 of the defence, the defendants also preserved their right to raise and argue at the hearing of the suit a preliminary objection on a point of law to the effect that this suit does not lie and is thus misconceived for breach of the mandatory provisions of the Public Authorities Limitation Act Cap 39 of the Laws of Kenya, and to seek to have the suit struck out.

3. And so, it was when the parties appeared before me on June 16, 2008, counsel for the defendants, Miss Langat raised the Preliminary Objection based on paragraph 8 of the defendants' written statement of defence, premised on Section 3 of Cap 39 Laws of Kenya to the effect that no proceedings founded on contract shall be brought against the government or Local Authority after the end of three years from the

date the cause of action arose. Section 3 of The Public Authorities Limitation Act, Cap 39 Laws of Kenya provides as follows:-

“3. (1) No proceedings founded on tort shall be

brought against the Government or a local

authority after the end of twelve months

from the date on which the cause of action

accrued.

(2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.

(3) Where the defence to any proceedings is that the defendant was at the material time acting in the course of his employment by the Government or a local authority and the proceedings were brought after the end of –

(a) twelve months, in the case of proceedings founded on tort; or

(b) three years, in the case of proceedings founded on contract

from the date on which the cause of action accrued, the court, at any stage of the proceedings, if satisfied that such defendant was at the material time so acting, shall enter judgment for the defendant”

4. Miss Langat submitted on behalf of the defendants that the plaintiff who was retired way back in 1992 and whose appeal for reinstatement was rejected by the defendants vide their letter dated September 21, 1993, did not file suit until November 30, 2006, some thirteen years down the line from the date when the cause of action accrued. Miss Langat also contended that since the plaintiff did not seek leave of this honourable court to extend the time within which to file suit, his suit should be struck off.

5. Miss Njogu who held brief for Mr. Perez Odero for the plaintiff objected to the Preliminary Objection and argued that since his retirement in 1992, the plaintiff had been in constant communication with the defendants with a view to having his appeal for reinstatement dealt with and that it was not until the year 2003 that it became clear to the plaintiff that the defendants were done with his case. This, Miss Njogu argued, was the reason for the delay. She said nothing about the defendant's contention that the plaintiff had not obtained any leave from this honourable court to file his suit out of time. Miss Njogu referred to a number of letters exchanged between the plaintiff and the defendants and in particular the letters dated January 31, 2003, February 18, 2003 to support the plaintiff's contention that until the dates of the said letters, the plaintiff was still under the impression that he would be reinstated into employment.

6. In reply, Miss Langat submitted that all the letters referred by the plaintiff to support the delay had to do with the plaintiff's request to have the appeal reinstated, and further that all the letters by the 1st defendant clearly indicated that the plaintiff's appeal had been rejected. Miss Langat also argued that of the plaintiff wanted to pursue his case with the employer, he should have done so with the Public Service Commission and that in any event, the plaintiff did not have to await outcome of the communication before filing the suit. In Miss Langat's view no excuses given by the plaintiff for the delay had no basis.

7. From the pleadings and the submissions the following facts arise:-

a. That the plaintiff was dismissed from his employment by a letter dated May 1, 1992.

b. That the plaintiff appealed against his dismissal vide his letters dated April 20, 1990, April 29, 1991, October 31, 1991 and June 28, 1993 respectively.

c. That the appeal against dismissal was rejected.

d. That this suit was filed on November 30, 2006, some 14 years after the cause of action accrued.

8. I have considered the pleadings, the submissions and the law and I am persuaded that the plaintiff's suit cannot escape the provisions of section 3 of Cap 39. Since the relationship between the plaintiff and the defendants was based on contract the plaintiff's suit should have been brought in accordance with subsection (2) of the said section. Having failed to file suit within three years from the date when the cause of action accrued, that is to say within three years from May 1, 1992 the plaintiff lost his chance to bring these proceedings unless he obtained leave to file suit out of time. There is no proof by the plaintiff that such leave was either sought and/or obtained. In my view, the plaintiff slept on his rights for far too long.

9. In the result, the preliminary objection is upheld. The plaintiff's suit, filed in court on November 30, 2006 be and is hereby dismissed. The defendants shall also have the costs of this suit.

These are the orders of the court.

Dated at Nairobi this 18th day of July 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-