



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 402 OF 2013**

**(Before Hon. Justice Hellen S. Wasilwa on 27<sup>th</sup> April, 2018)**

**JOSEPH WAMBUGU MBOGO.....CLAIMANT**

**-VERSUS-**

**PAWS AFRICA SAFARIS LIMITED.....RESPONDENT**

**RULING**

1. The Application before Court is a Preliminary Objection dated 4.11.2015 filed by the Respondent on the grounds that this Court lacks jurisdiction to hear and determine this claim on the ground that the claim is time barred and offends the mandatory provisions of Section 90 of the Employment Act 2007 and should therefore be struck out with costs to the Respondent.
2. The Respondent also filed their submissions on the Preliminary Objection on 4/8/2017 and they contest that this claim was filed on 26<sup>th</sup> March 2013. That however the Claimant avers that he resigned from employment on 14.3.2010 and so he should have filed his claim within 3 months which period expired on 14.3.2013 and so having filed after this date, the claim is time barred. They also submit that as much as the matter is time barred, this Court lacks jurisdiction to entertain the same.
3. The Claimant filed their submissions on 16/11/2017 in opposition to this Preliminary Objection. They contend that this Court should proceed and hear the matter in the interest of justice. They cited **Mary Osundwa vs Nzoia Sugar Company Limited Civil Appeal No. 244 of 2000.**
4. I have considered averments of both parties. Section 90 of Employment Act states as follows:  
  
*“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 or a contract of service in general shall lie or be instituted un less 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”.*
5. In view of this provision, matters filed under the Employment Act 2007 should be filed within 3 years from the date the cause of action arose.
6. In this case, the cause of action arose on 14.3.2010 when the Claimant resigned. The Claimant should have filed his claim by 13.3.2012.
7. This claim having been filed on 26/3/2013 is time barred. This Court does not have jurisdiction to extend time as was held in the **Court of Appeal sitting at Kisumu in Civil Appeal No. 6/2015 KAA vs Shadrack Abraham Kisongochi.**
8. That being the position and the law, I do find the Preliminary Objection has merit. I find this claim time barred and I dismiss it accordingly with costs to the Respondents.

Dated and delivered in open Court this 27<sup>th</sup> day of April, 2018.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Maina for Respondent/Applicant

Macharia for Claimant