



**Karuri v Teachers Service Commission (Civil Appeal 3 of 2018)
[2021] KECA 215 (KLR) (26 November 2021) (Judgment)**

Neutral citation: [2021] KECA 215 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL 3 OF 2018
DK MUSINGA, HM OKWENGU & MSA MAKHANDIA, JJA
NOVEMBER 26, 2021**

BETWEEN

GIBSON GATHUTHU KARURI APPELLANT

AND

EXECUTIVE OFFICER, TEACHERS SERVICE COMMISSION ... RESPONDENT

(An appeal from the Ruling of the Employment and Labour Relations Court of Kenya at Nakuru (S. Radido, J.) delivered on the 2nd October, 2017) in ELRC No. 116 of 2017)

JUDGMENT

1. The appellant who was the claimant in the ELRC, is aggrieved by the ruling delivered in that court on 2nd October, 2017 in which the learned Judge (Radido, J.) upheld a preliminary objection that had been raised by the respondent that the appellant's claim was statute barred, having been filed more than 6 years after the cause of action arose.
2. The appellant has filed a memorandum of appeal in which he amongst other things faults the learned Judge for finding that the cause of action did not run from 8th February, 2007. The appellant has also filed written submissions in support of his appeal in which he reiterates that the learned Judge misdirected himself on the date when the cause of action arose. The appellant maintains that his cause of action accrued on 28th March, 2012 when he filed an application to be allowed to file the suit as a pauper.
3. In support of his submissions, the appellant relied on the case of *Alba Petroleum Limited vs Total Marketing Kenya Limited [2019] eKLR* in which this Court upheld the finding of the High Court that limitation period started to run on the date when the respondent discovered the mistake.
4. In opposing the appeal, Mr. Sitima, learned counsel who appeared for the respondent, submitted that the cause of action arose on 4th of April, 2007, and that the appellant moved to court on 9th March, 2017 which was well over the six-year limitation period. Counsel added that there was no provision



for extension of time as the principle of limitation cannot be waived. He therefore urged the court to dismiss the appeal.

5. We have considered this appeal and the submissions made before us. As pointed out by learned counsel for the respondent, there is only one issue that arises, and that is, whether the learned Judge properly directed himself in upholding the preliminary objection raised by the respondent and striking out the appellant's claim.
6. A look at the record of appeal reveals that the appellant lodged his statement of claim on 9th March, 2017. The statement of claim is not very clear on when the cause of action arose. However, the appellant's affidavit which he swore in support of his statement of claim, and the annexure thereto, show that the appellant was dismissed from his employment with the respondent by a letter dated 8th February, 2007. His appeal against the dismissal was rejected on 22nd June, 2007.
7. The appellant's cause of action was based on his contractual relationship with the respondent arising from his employment. Under section 4 (1) of the *Limitations of Actions Act*, the appellant had six years within which to file his claim. The appellant having lodged his statement of claim in the ELRC court on 9th March 2017, which was almost 10 years after his appeal against his dismissal was unsuccessful, the claim was statute barred.
8. The appellant has all long been acting in person and we do sympathize with him. However, he has only himself to blame as he wasted valuable time referring his matter to the Public Complaints Standing Committee, Kenya National Commission on Human Rights, the Ethics and Anti-Corruption Commission, the National Legal Aid & Awareness Program, and the National Assembly, all of whom had no jurisdiction to determine the dispute.
9. In the circumstances the learned judge was right in upholding the preliminary objection as the court had no jurisdiction to entertain the claim after the statutory limitation period had expired. Accordingly, the appeal before us has no merit, and is dismissed. Given the circumstances of this matter, we think the appropriate order on costs would be for each party to bear their own costs. It is so ordered

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF NOVEMBER, 2021.

D.K. MUSINGA (P)

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JUDGE OF APPEAL

HANNAH OKWENGU

.....

JUDGE OF APPEAL

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR

