



REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI

CORAM: KWACH, LAKHA & KEIWUA, J.J.A.

CIVIL APPEAL NO. 144 OF 1999

BETWEEN

JOEL KIPRONO LANGAT APPELLANT

AND

KENYA POSTS & TELECOMMUNICATION CORPORATION RESPONDENT

**(Appeal from a ruling and order of the High Court of
Kenya at Nairobi (Lady Justice Ang'awa) dated 21st
January, 1999**

in

H.C.C.C. NO. 2640 OF 1997)

JUDGMENT OF THE COURT

JOEL Kiprono Langat (the appellant) was at one time employed by the respondent, Kenya Posts and Telecommunications Corporation (KPTC), as a mechanic. On 30th October, 1991, KPTC dismissed him. In October 1997, the appellant filed a suit in the superior court against KPTC alleging wrongful dismissal and sought, among other reliefs, a declaration that his dismissal was wrongful; general damages; salary in lieu of notice and pension. KPTC filed a defence denying the appellant's claim and also contended that the suit was incompetent for failure on the part of the appellant to comply with the mandatory provisions of section 109(a) and (b) of the Kenya Posts and Telecommunications Corporation Act (Cap 411) (the Act).

When, the suit came up for hearing before Ang'awa J the Advocate for KPTC raised a preliminary objection that the suit was time-barred because it was not brought within the time limited by section 109 of the Act. The learned Judge upheld the objection and dismissed the suit with costs. She gave leave to the appellant to appeal to this Court.

The grounds upon which this appeal is brought are that the learned Judge misapprehended the meaning, scope and tenor of section 109 of the Act and erred in law and fact in dismissing the appellant's suit on the ground that it was time-barred.

Section 9 of the Act which deals with limitation of actions against KPTC provides-

“109 Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution or intended execution, of this Act or of 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 -

(a) the action or legal proceeding shall not be commenced against the Corporation until at least one month after written notice containing the particulars of the claim, and intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent;

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

The gravamen of the appellant’s case is that he was unlawfully dismissed by KPTC without notice. When KPTC raised a preliminary objection that the suit was incompetent, it was incumbent upon the appellant to prove first, that he was entitled to be given notice before being dismissed, and, secondly, having been dismissed without notice, he had complied with the mandatory provisions of section 109 of the Act. In the defence filed by KPTC it was denied that the appellant was dismissed without notice or without sufficient cause. It was also averred that his dismissal was effected in accordance with his contract of service. This being the position taken by KPTC, we would have thought that in resisting the preliminary objection taken by KPTC the appellant would have seen the need not only to place before the learned Judge his contract of service which would contain the terms and conditions of his engagement, but also a copy of the notice he alleged he had served on the Managing Director of KPTC as required by section 109(a) of the Act. Both of these documents were not produced. The only way the appellant could prove that he had served the notice under section 109(a) of the Act was by tendering a copy of such notice in evidence. Having not done so, the plea in the defence by KPTC that no such notice was served, was well founded and the learned Judge rightly found that it was not served.

As regards the requirement that the proceedings have to be brought within twelve months from the date of the occurrence of the act complained of, Mr Busienei, for the appellant, submitted that a claim for damages for wrongful dismissal does not fall under that provision and being a contractual claim can be brought within six years under the relevant provisions of the Limitation of Actions Act (Cap 22). One only needs to read section 104(1) of the Act to see that Mr Busienei’s interpretation is wrong. Under the rubric Staff it states-

“104(1) Subject to this Act, the Board may appoint such employees of the Corporation as may be necessary for its efficient working under such terms and conditions, including conditions relating to discipline and dismissal, as it may think fit.”

It is plainly obvious from this section that appointment, discipline and dismissal of staff is an act done by KPTC in pursuance of execution of the Act within the meaning of section 109 thereof. It must follow from this that if the appellant wished to contest his dismissal by KPTC he had to institute proceedings within the time frame fixed under section 109 of the Act. He did not serve a notice of intention to commence action on the Managing Director nor did he institute the action within twelve months from the date of his dismissal. The result of this default is that the suit brought by the appellant was incompetent and did not lie. We can find no misdirection in the decision of the learned Judge.

The consequence of this is that this appeal has no merit and it is dismissed with costs.

Dated and delivered at Nairobi this 10th day of March, 2000.

R. O. KWACH

JUDGE OF APPEAL

A. A. LAKHA

JUDGE OF APPEAL

M. OLE KEIWUA

JUDGE OF APPEAL

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

DEPUTY REGISTRAR