

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1494 OF 2015

BETWEEN

JOSEPHAT HANNINGTON MUKIRI [deceased substituted by his legal representative

DANCUN LIFWA MUKIRI].....CLAIMANT

VERSUS

KENYA RAILWAYS CORPORATION [formerly known as

EAST AFRICAN RAILWAYS CORPORATION].....RESPONDENT

RULING

1. The Claimant was employed by the Respondent way back on 16th May 1972. He was retired in 1998.
2. He filed this Claim on 25th August 2015. He claims that at the time of retirement he was not paid certain benefits, including severance, excess pension arrears, lump sum payment, and salary adjustment- total Kshs. 373,139.12. He claims general damages, costs and interest.
3. He states that, ‘‘ during retirement, the Respondent failed to comply with the dictates of the Employment Act 2007...’’
4. The Respondent filed a Notice of Preliminary Objection on 18th March 2021, arguing that the Claim is time-barred. It was filed 17 years after the cause of action arose.
5. Parties agreed to have the Objection canvassed by way of written submissions. These were confirmed to have been filed and served, at the last mention in Court, on 14th October 2021.

The Court Finds: -

6. The Claim is clearly time- barred, whether looked at from the perspective of the Employment Act 2007, which the Claimant pleads applies to his Claim, or the perspective of the Limitation of Actions Act. The 2 Acts of Parliament place a limitation of 3 and 6 years respectively, from the time the cause accrues. How was the Respondent to comply with the dictates of the Employment Act, 2007 during the Claimant’s retirement, while the Act was not in place? 17 years, is too long a delay, to bring an employment dispute before this Court.

IT IS ORDERED: -

The Preliminary Objection is upheld, and the Claim dismissed for want of temporal jurisdiction, with no order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF JANUARY 2022.

James Rika

Judge