



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO E332 OF 2020

MARK THEOPHIL ODERO ADOYO.....CLAIMANT

VERSUS

KCB GROUP PLC.....RESPONDENT

RULING

1. This ruling relates to the Respondent's application brought by Notice of Motion dated 10th May 2021.
2. In the said application, the Respondent seeks orders to strike out the following claims from the Claimant's Statement of Claim:
 - a. MBA refunds – Kshs, 30,000.00 (Prayer 2);
 - b. Paternity leave – Kshs. 1,281,499.00 (Prayer 3);
 - c. Sick leave – Kshs. 398,688.00 (Prayer 4);
 - d. Health Club membership- Kshs. 1,000,000.00 (Prayer 5)
 - e. 4% Disability – Kshs. 7,483,556.00 (Prayer 6);
 - f. 2016 Bonus balance – Kshs. 120,000.00 (Prayer 7);
 - g. Medical- Maternity bill – Kshs. 190,000.00 (Prayer 8);
 - h. Account 1100xxxx – Kshs. 18,000.00 (Prayer 9);
 - i. Ensuring that Mobi works – Kshs. 384,280.00 (Prayer 10);
 - j. Mobi Tests refund – Kshs. 10,000.00 (Prayer 11);
 - k. C2B M-PESA charges Kshs. 4,700.00 (Prayer 12);
 - l. USSD charges – Kshs. 7,665.00 (Prayer 13);
 - m. Salary not paid – Kshs. 43,261.00 (Prayer 14);
 - n. Bonus forgone – Kshs. 8,652,382.00 (Prayer 15).
3. The application is supported by an affidavit sworn by the Respondent's Head of Employee Relations & Wellness, Robley Ngoje and is based on the following grounds:
 - a. The Claimant's purported causes of action, in relation to prayer 2 to prayer 15, are time-barred, having arisen in various years between 2015 and 2016, while the instant claim was filed on 22nd July 2020;

b. The claims listed from prayer 2 to prayer 15 between the Claimant and the Respondent are time barred under the provisions of Section 90 of the Employment Act (2007) as read with Section 4 of the Limitation of Actions Act, Cap 22 of the Laws of Kenya;

c. The claims raised at prayer 2 to prayer 15 are an abuse of the court process.

4. The Claimant opposes the application by his replying affidavit sworn on 8th June 2021.

5. He states that the position taken by the Respondent in respect of the limitation of time regarding the various prayers sought in the claim filed in court on 22nd July 2020, is completely wrong.

6. The Claimant further states that he left the Respondent's employment on 31st July 2019.

7. The Claimant avers that the causes of action in issue arose on 11th September 2017, when the Respondent failed pay him the subject claims. According to the Claimant, limitation would crystalize on 11th September 2022.

8. In determining whether the listed claims are statute barred by dint of Section 90 of the Employment Act as read with Section 4 of the Limitation of Actions Act, the central question is when the causes of action arose. From the pleadings and supporting documents filed by the parties, it is evident that this a contested matter, which can only be determined at full trial.

9. For this reason, it would be unsafe to strike out the subject claims at this interlocutory stage.

10. The Respondent's application dated 10th May 2021 is therefore declined with costs in the cause.

11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2022

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JUDGE

Appearance:

Mr. Jaoko for the Claimant

Mr. Angwenyi h/b Mr. Wetanugla for the Respondent