



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 418 OF 2015

GERALD RATEMO MABEYA.....CLAIMANT

VERSUS

ATTORNEY GENERAL & ANOTHER.....RESPONDENT

JUDGMENT

Introduction

1. This matter was initially filed before the High Court at Kisii being Civil Suit No. 301 of 2010. The matter was later transferred to the Employment and Labour Relations Court at Kisumu on 9th November, 2015 and assigned the current number.
2. The matter was dismissed twice for non-attendance of the parties and later reinstated through an application dated 14th October, 2021 and filed in court on 15th October, 2021. The matter was then fixed for hearing on merit and the hearing proceeded on the 16th November, 2021.
3. The Claimant testified in support of his case.
4. The Respondent did not participate in the hearing and only filed a statement of defense.

The Claimant's Case

5. The Claimant was employed by the then District Commissioner's Office and based at Kisumu as a higher Clerical Officer from the year 1987 to 1991. He was arrested and charged in the year 1991 with various counts including forgery, fraudulent false accounting, and uttering a false document. He was convicted of the charges and later on appeal, the court set aside the conviction and ordered a re-trial which never took off.
6. The Claimant's case is that he was not taken through a disciplinary process and that he had done nothing wrong.
7. The Claimant's prayer to this court is for payment of salary arrears and pension.

The Respondent's Case

8. The Respondent in their defence dated 28th December, 2010 and filed in court on 10th January, 2011 state that the Claimant was convicted after the court had fully heard his case.
9. The Respondent further states that the Claimant has not made any effort to set the matter (Criminal) for re-trial as was ordered by the appellate court.
10. The Respondent states that the Claimant is not entitled to any payment of salary arrears. The Respondent further states that the suit is statute barred by the mandatory provisions of Section 3 of the Public Authorities Limitations Act Cap. 39 of the Laws of Kenya.
11. The Respondent prays that the Claimant's suit be dismissed with costs.

Determination

12. The issues for determination in this matter are:

- i. Whether the suit is statute barred
- ii. Whether the Claimant is entitled to the reliefs sought.

Whether the suit is statute barred

13. A determination of whether or not a suit is time limited/barred, is dependent on when the cause of action in the matter accrued.

14. The Claimant in this matter was charged with various counts of criminal liability sometimes in the year 1991. He lodged this suit in the year 2010.

15. Although it is not clear when the Claimant left the employ of the Respondent, he stated in his plaint/Statement of claim that he worked for the Respondents between the year 1987 and 1991.

16. The Claimant's notice of intention to sue is dated 18th October, 2004 while the actual suit was filed in 2010; about six years later.

17. Section 3 of the Public Authorities Limitations Act, states as follows:

“(1).....”

(2)No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”

18. Section 90 of the Employment Act likewise limits the period for lodging of Employment related claims to three years.

19. The Claimant's claim is for payment of salary arrears as at the time his conviction was set aside and pension for the period he was in the service of the Respondent.

20. The suit is premised on the setting aside of Claimant's conviction.

20. The time when the conviction was set aside, is in my opinion the time when the cause of action crystalized as the Claimant had no claim against the Respondent before the conviction was set aside.

21. The documents before court do not show when exactly the Claimant's conviction was set aside. A letter of intention to institute suit against government dated 18th October, 2004, should have been written soon after the setting aside of the conviction and would then point this court to the time around which the conviction was set aside.

22.

23.

24.

25.

The cause of action in the opinion of this court, accrued on or before October, 2004. The suit before this court was filed in the year 2010; about 6 years later.

23. The court finds and holds that this suit is statute barred per Section 3 of the Public Authorities Limitations Act read with Section 90 of the Employment Act, 2007.

24. The upshot is that the suit is time barred and is dismissed.

25. The Respondent did not participate in the hearing of the suit, and for this reason I make no orders as to costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 3RD DAY OF FEBRUARY, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Sagwe present for the Claimant

N/A for the Respondent

Christine Omollo- C/A