

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 415 OF 2019

EUNICE SHAMIA LUMALLAS.....CLAIMANT

VERSUS

PARLIAMENTARY SERVICE

COMMISSION & ANOTHER.....RESPONDENTS

RULING

1. The Respondents raise a preliminary objection to the suit on the grounds that the claim herein is time barred as the cause of action arose on 14th October 2013 when the decision of the Parliamentary Service Commission was communicated to the Claimant. The Respondents assert by virtue of the provisions on limitation under Section 90 of the Employment Act the Court lacks jurisdiction to hear the matter as the claim is barred by statute.

2. The Claimant on her part contends that the suit against the Respondents was brought to this Honourable Court within the time frame prescribed by statute. The Claimant asserts that the employment was terminated on 29th July 2016 by way of constructive dismissal. She cited the case of **Joseph Aleper & Another v Lodwar Water and Sanitation Company Limited [2015] eKLR** and argued that her constructive dismissal was due to the wrongs meted out to her by the employer and that the cause of action arose from the date of dismissal and that she was within the period prescribed by statute to seek redress from the courts. She relied on the case of **David Wanjau Muhoro v OI Pejeta Ranching Limited [2014] eKLR** where the Court held that all benefits accruing to the Claimant should be paid in full upon termination and that they must be enforced when the relationship comes to an end. Further the Court held that the different claims making up the claim would only suffer limitation if the claim itself is statutory barred. She asserts that the preliminary objection has no basis and thus must be dismissed with costs.

3. The Respondents in their defence under paragraph 35 contend that the Claimant by her own volition resigned on 29th July 2016 and that the Parliamentary Service Commission accepted her resignation. By a simple arithmetic the Claimant's cause of action in regard to her employ arose on 29th July 2016. Her suit ought therefore have been filed on or before 29th July 2019. She filed the suit on 26th July 2019 and therefore the suit before the Court was three days shy of limitation under Section 90 of the Employment Act. The suit is thus validly before the Court. In the premises the preliminary objection raised by the Respondents is baseless and as a result stands dismissed with costs to the Claimant. After this Ruling the Court will assign a date for pre-trial compliance and subsequently set a hearing date.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JANUARY 2021

NZIOKI WA MAKAU

JUDGE