



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 121 OF 2020

CHRISTOPHER MUNG'OMA WASIKE.....CLAIMANT

VERSUS

NATIONAL SOCIAL SECURITY FUND.....RESPONDENT

RULING

1. The Claimant filed his suit on 27<sup>th</sup> February 2020. He avers that at all material times to the suit he was an employee with the Respondent vide employment No. 2777 since 7<sup>th</sup> February 2011 to 1<sup>st</sup> May 2015. The Claimant asserts that the Respondent offered him a Voluntary Early Retirement Scheme (VERS) on 22<sup>nd</sup> April 2014. The Respondent objects to the suit through its Counsel Mr. Anthony Kilonzo asserting that the suit is time barred in terms of Section 90 of the Employment Act. Counsel filed a preliminary objection indicating that the Court has no jurisdiction as the claim is statute barred by limitation. In support of its contention the Respondent cites the Supreme Court advisory opinion in the case of **The Matter of the Interim Independent Electoral Commission, Supreme Court Constitutional, Application No. 2 of 2011 [2011] eKLR** and also the Superior Court cases of **Fred Mudave Gogo v G4S Security Services (K) Ltd [2014] eKLR** and **Maria Machocho v Total Kenya Limited [2013] eKLR** and **Nicodemus Marani v Timsales Limited [2014] ekLR**. The Respondent's Counsel argues that there is no jurisdiction to extend time and urges the Court to uphold the suit and strike out the claim by the Claimant for want of jurisdiction.

2. The Claimant's suit was filed on 27<sup>th</sup> February 2020 whereas his cause of action accrued on 1<sup>st</sup> May 2015. Under Section 90 of the Employment Act, the law provides as follows:-

*90. Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof. (emphasis mine)*

3. From a reading of the law, the objection is well taken and the suit is therefore struck out for being an abuse of the Court process having been filed out of time.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF MARCH 2021**

**NZIOKI WA MAKAU**

JUDGE