



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NUMBER 151 OF 2020

BETWEEN

CHARLES EDWARD SIKULU.....CLAIMANT

VERSUS

UNIVERSITY OF NAIROBI..... RESPONDENT

RULING

1. The Claimant filed this Claim on 10th March 2020. He claims he is, or was at the time of filing the Claim, Deputy Registrar of the Respondent. His Claim is on pay discrimination at the workplace.

2. Under the relevant CBAs, concluded between the Respondent and the Claimant's Union, the Claimant asserts he was entitled to entertainment allowance. It was not paid to him, for the period between 1st May 2015 to 31st June 2019.

3. He therefore lodged this Claim, seeking orders that: the Respondent's action is declared illegal, unlawful and invalid; declaration that the failure by the Respondent to pay to the Claimant entertainment allowance unlike his colleagues holding similar positions, amounts to discrimination; the Respondent pays to the Claimant accrued entertainment allowance at Kshs. 988,600; damages for constitutional breaches; costs; interest; and any other suitable relief.

4. He has encountered Preliminary Objection filed through a Notice dated 25th February 2021 by the Respondent. The Respondent argues that the Claim is time-barred under Section 90 of the Employment Act 2007. It is submitted by the Respondent that the Claim was filed on 10th March 2020. The Claimant seeks entertainment allowance accrued between 1st May 2015 to 31st June 2019.

5. Parties agreed to have the Preliminary Objection canvassed by way of Written Submissions. It was confirmed in a virtual session on 8th April 2021 that Submissions have been filed. The Court indicated it would deliver Judgment, rather than a Ruling, on 16th July 2021. This must have been indicated by error. What is under consideration is a Ruling on Respondent's Preliminary Objection.

The Court Finds: -

6. The Claim is about pay discrimination.

7. In *David Wanjau Muhoro v Ol Pejeta Ranching Limited [2014] e-KLR*, the issue about limitation of time under Section 90 of the Employment Act, with respect to claims for pay discrimination, arose.

8. The Court held that the period of employment was continuous, with employment benefits accruing over time, and that such benefits could not be subjected to a different date of accrual.

9. The Court similarly appreciated the Judgment of the late *Hon. Justice Ruth Bader Ginsburg in U.S. Supreme Court in Lilly Ledbetter v. Goodyear Tyre & Rubber Co. 550 U.S. 618 2007*, where the Judge argued it was wrong to apply time limit law, in a discrimination suit. Discrimination, it was held, often occurs in small increments over large period of time. The Employer, it was argued, carried past discrimination forward, and should not be allowed to avoid remedying discrimination, by invoking the law on time limit. The cause of action in pay discrimination is renewed, every time a discriminatory pay cheque issues.

10. The Claimant alleges he suffered pay discrimination from 1st May 2015 to 31st June 2019. This would mean the Respondent carried

forward past pay discrimination until 31st June 2019, which would in the respectful view of the Court, be the date the cause of action accrued. The cause of action was renewed from 1st May 2015, every end of the month the Claimant received a discriminatory pay cheque, crystallizing on 31st June 2019, when discrimination apparently ceased. There could never be disparate causes of action after receipt of every pay cheque. There was one cumulative cause of action, renewed with every discriminatory pay cheque received by the Claimant, until discrimination ceased, which would be 31st June 2019.

11. The Court is persuaded, without the aid of judicial craft and innovation, that it has temporal jurisdiction in this dispute, and the Claim is not time-barred.

IT IS ORDERED: -

a. The Preliminary Objection is declined.

b. Parties to set the Claim down for hearing upon meeting all the pre-trial procedures.

DATED, SIGNED AND RELEASED TO THE PARTIES UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 16TH DAY OF JULY 2021.

James Rika

Judge