



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 57 OF 2018

LUCAS ABUGA MORANGA.....CLAIMANT

VERSUS

WELLS FARGO LIMITED.....RESPONDENT

RULING

1. The Claimant, Lucas Abuga Moranga filed a claim against his former employer, Wells Fargo Limited, on 31st January 2018.

2. On 21st February 2018, the Respondent filed a Notice of Preliminary Objection on the ground that the Claimant's claim is statute barred by dint of Section 90 Of the Employment Act. It is this objection that is the subject of this ruling. The Claimant did not respond to the objection.

3. In its submissions filed in court on 14th April 2021, the Respondent referred to the following definition of a preliminary objection by **Law JA** in *Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited (1969) EA*:

“...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration...”

4. The Respondent's objection is based on Section 90 of the Employment Act which states:

90. Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, 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 3 years after the act, neglect or default complained or in the case of continuing injury or damage within 12 months next after cessation thereof.

5. In his Memorandum of Claim dated and filed in court on 31st January 2018, the Claimant states that he was summarily dismissed on 17th September 2014. In its decision in *Attorney General & another v Andrew Maina Githinji [2016] eKLR* the Court of Appeal confirmed that in a claim arising from termination of employment, the cause of action accrues on the date of termination, as communicated to the employee.

6. In the present case, the Claimant's dismissal was the cause of action and time therefore began to run from its date, being 17th September 2014. The claim therefore ought to have been filed on or before 16th September 2017.

7. It is now well settled that Section 90 of the Employment Act leaves no room for extension of time. In *Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR* the Court of Appeal stated the following:

“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the Employment Act which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years.”

8. Similarly, in *Samuel Onchonga v Ken-Knit Kenya Limited [2017] eKLR* **Onyango J** stated thus:

“The Employment Act does not provide for extension of limitation period which in any event the Claimant did not apply for. The jurisdiction of courts is provided for by law. A court cannot arrogate to itself a jurisdiction that it does not have.”

9. My hands are tied by the law on limitation and I have nothing more to do except to uphold the Respondent's Preliminary Objection and

thus declare that the Claimant's claim filed on 31st January 2018 is incompetent on account of limitation of time. The said claim is therefore struck out.

10. Each party will bear their own costs.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 15TH DAY JULY 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Claimant

Miss Lelu for the Respondent