REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE NO. 119 OF 2016

KENNEDY SIMIYU MURUNGA.....CLAIMANT

VERSUS

LAIKIPIA UNIVERSITY.....RESPONDENT

RULING

1. The Claimant herein filed this claim on 1st April, 2016 alleging unfair termination of his employment that allegedly came to an end on expiry of contract on 28th September, 2012. He stated that prior to the expiry of the said contract he had worked for the respondent continuously from August, 2006 till 26th June, 2012 when his employment was converted to a short term contract of 3 months which came to an end after the 3 months with no option of renewal.

2. In response the Respondent filed its defence on 27th March 2017 and on 22nd March 2021 they raised a Preliminary objection based on the following grounds;-

> **1) That the claimant's suit as filed in the memorandum of claim dated 1st April, 2016 is fatally defective for the same is statute barred for being filed outside the limitation of time contrary to the provisions of section 90 of the Employment Act.**
>
> **2) That the claimant's employment contract expired on 28th September, 2012 and this suit was filed on 1st April, 2016 which is past the three (3) years.**
>
> **3) That the claimant did not seek for leave of this Honourable Court to file this suit out of time.**
>
> **4) That the claimant's suit is untenable in law, inept and ought to be struck out with costs.**

3. The Claimant filed a replying Affidavit on the 15th July, 2021 deposed upon on even date opposing the preliminary objected and averred that the claim herein was first filed in October, 2015 under ELRC cause number 284 of 2015 **David Mwangi Wachira and other –v- Egerton university** (Currently Laikipia University). He stated that he was the 2nd claimant in that suit.

4. He averred that the Respondent entered appearance through the firm of Mwangi Mukira and Company Advocates and filed their defence on 9th December 2015. Subsequently the matter was mentioned severally in Court and Justice Radido Ordered the claim be separated and each claim be heard separately on its merit.

5. The claimant maintains that the claim herein is rightly before this court and urged this Court to struck out the Preliminary objection and hear the claim on its merit.

6. I have examined the averments and submissions of the parties herein. The respondents filed a preliminary objection herein alleging that this claim is time barred. The claimant on his hand responded averring that he filed this claim in time vide ELRC Cause No. 284 of 2015 but that Hon. J. Radido directed that the claim be split into two and be heard separately.

7. The claimant exhibited Form 2 – summons to enter appearance in Cause 284 of 2015 which shows that this claim was filed and issued on 23/10/2015. He has not however annexed pleadings in this cause and the order from J. Radido ordering that the matter be separated and each case be heard on its own.

8. The claimant should have demonstrated that this matter was filed following an order of the court emanating from Cause No. 284 of 2015.

9. In any case, if there was such an order the claimant should have proceeded to extract the same and most probably proceed with the claim as No. 284 of 2015.

10. There being no evidence of this orders, I find that indeed this claim is time barred as Under Section 90 of the Employment Act 2007 which states as follows;

> ***90. Limitations***
>
> ***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.***

11. I hereby proceed to strike out this claim on account of being time barred.

12. The claimant is free to pursue his claim under Cause 284 of 2015.

13. Costs to the respondents.

RULING DELIVERED VIRTUALLY THIS 5TH DAY OF OCTOBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Awuor for claimant – present

Mwangi Mukira & Co. Advocates for the Respondents –

Present

Court Assistant - Fred