



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 2157 OF 2016**

**FRANCIS GITONGA.....CLAIMANT**

**VERSUS**

**ROY PARCEL SERVICES LIMITED.....RESPONDENT**

**RULING**

1. The Respondent through the Preliminary Objection dated 10<sup>th</sup> July, 2020 raises the matter of limitation. Counsel for the Respondent has articulated that the Claim which was filed on 13<sup>th</sup> October, 2016 is statute barred by dint of Section 90 of the Employment Act. She asserts that the cause of action arose on 11<sup>th</sup> October 2013 and being an employment dispute had 3 years limitation. She urges the disallowance of the suit for being limited and statute barred.

2. The Claimant did not file any opposition to the Objection and to boot are absent today despite being present in Court on 26<sup>th</sup> July 2021 when the Hon. Deputy Registrar of this Court set today for hearing of the Preliminary Objection.

3. The objection taken is well founded and Preliminary Objection in the case of **Mukisa Biscuit Manufactures Company Limited v West End Distributors [1968] EA 398** is that a Preliminary Objection may be raised where a question of limitation is in issue.

4. The Claimant's cause of action occurred on 11<sup>th</sup> November 2013. By filing his Claim on 19<sup>th</sup> October 2016, he was within time as the limitation would have set on 11<sup>th</sup> November 2013 as the date the letter was clear he terminated his employ with Respondent as per the Memo from the Respondent. As such the limitation had not set in by the time of the filing of the suit. As such Preliminary Objection fails and is dismissed with no order as to costs since Claimant did not even attempt to oppose it.

5. Mention of the Cause on 19<sup>th</sup> October 2021 to obtain directions on the hearing of the suit. Notice to issue.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF OCTOBER 2021**

**NZIOKI WA MAKAU**

**JUDGE**