

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRCC/28/2020

CITATION: BERNARD KIMUTAI MAIYO VS AMPATH PLUS

RULING

ON 2021-10-15 BEFORE HON. JUSTICE J. N. ABUODHA

1. The respondent herein raised objection in limine that the Claimant having resigned on 3rd May, 2013 and later suspended and eventually dismissed on 10th June, 2013, the suit herein is statute barred having been filed on 28th July, 2020 which was more than seven years after the accrual of the cause of action.

2. According to the Claimant, the suit herein was filed nine months after the acquittal of the Claimant on 31st October, 2019. The Claimant further stated that Kisumu ELRC No 339 of 2014 was lodged within time in 2014 before the dismissal without notice to the parties.

3. The Court of Appeal in the case of Hilarion Mwabalo v. Kenya Commercial Bank (2013) eKLR held as follows:

“Accrual of the Cause of action in a claim emanating from employment contract takes effect from the date of termination as stated in the letter communicating the termination. The fact that an employee whose employment has been terminated seek a review or an appeal does not mean that accrual of the cause of action is held in abeyance until final verdict on review or appeal”.

4. The same should apply in this particular case before me. The Claimant was terminated on 10th June, 2013. This is when the cause action accrued and not when he got acquitted 30th October, 2019 in Criminal case number 1976 of 2013. Nothing prevented the Claimant from filing a civil claim while the Criminal case was going on. The claim will therefore be struck out with costs for being statute barred.

5. Mention was made of Kisumu ELRC 339 of 2014 which was allegedly lodged within time but was dismissed for want of prosecution without notice to the parties. This is doubtful because dismissal

for want of prosecution at the instance of the Court is usually done after notice to the parties. In any event the Court fails to understand why the Claimant chose to file a new suit herein when all he could have done was to seek the revival of the dismissed suit by showing sufficient cause.

6. It is so ordered.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON 2021-11-27 10:27:42

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-11-27 10:27:42