



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 214 OF 2014

BETWEEN

LUCAS O. ODONYA.....CLAIMANT

VERSUS

KENYA RAILWAYS CORPORATION.....RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection dated 12th July 2021.
2. The Grounds are: -
 - a. The entire Claim is time-barred and does not lie by virtue of Section 87[b] of the Kenya Railways Corporation Act, Chapter 397 of the Laws of Kenya.
 - b. The entire Claim is time-barred and does not lie by virtue of Section 90 of the Employment Act, 2007.
3. The Claimant filed 5 Grounds of Opposition dated 15th October 2021. They are: -
 - a. The Claim does not fall within classes of actions, that are subject to limitation. The unpaid terminal dues constitute a continuing injury and is not time-barred.
 - b. The issue of non-payment or underpayment of terminal dues is a matter of fact that cannot be determined at a preliminary stage.
 - c. The Respondent did not plead limitation and cannot benefit from a defence not pleaded.
 - d. The Court has jurisdiction to entertain and determine the Claim herein.
 - e. The Notice of Preliminary Objection is an abuse of the court process, and ought to be dismissed.
4. The common facts, as can be read from the Pleadings are that: the Claimant was initially employed by the Respondent in 1971; the Respondent ceded its railway service to Rift Valley Railways on 1st November 2005; the Claimant's service was transferred to Rift Valley Railways; Employees who were not transferred were retrenched; on 1st April 2008, the Claimant was retrenched by Rift Valley Railways in accordance with the prevailing CBA; and upon retrenchment, the Claimant reverted to his original Employer, the Respondent herein, Kenya Railways Corporation for purposes of payment of retrenchment package and retirement benefits.
5. He filed this Claim on 19th February 2014. As shown in the Statement of Claim amended on 12th June 2018, the Claimant seeks retrenchment package and retirement benefits, calculated at Kshs. 8,648,170.
6. It was agreed in Court on 16th July 2021 that the Preliminary Objection is argued and determined on the strength of Written Submissions. Parties confirmed the filing and exchange of Submissions, at the last session on 7th October 2021. Ruling was scheduled for 16th December 2021, but is ready for delivery, on the date shown below.

The Court Finds: -

7. There is a catena of Judicial Authorities, establishing that Section 87 [b] of the Kenya Railways Corporation Cap 397 the Laws of Kenya, and Section 90 of the Employment Act, 2007 are jurisdictional laws.

8. These Judicial Authorities include **Joseph Sebastian Ringo v. Kenya Railways Corporation [2015] e-KLR** and **Alloyce Obama v. Kenya Railways Corporation [2019] e-KLR**, which have been cited by the Respondent.

9. The limitation under Section 87 [b] of the Kenya Railway Corporation Act, is replicated across most Legislation establishing State Corporations.

10. Section 66 of the Kenya Ports Authority Act, for example, has a limitation period of 1 year for presentation of Claims against the Corporation before the Court, from the date the cause of action arises.

11. The 1-year limitation, under the KPA Act, has been affirmed in among others, Court of Appeal decisions, **Kenya Ports Authority v. Cyrus Maina Njoroge [2018] e-KLR**.

12. The Claimant was retrenched in 2008. Under the Kenya Railways Corporation Act, his Claim expired after 1 year, in 2009. He was at least 5 years late, by the time he filed his Claim in 2014.

13. Assuming his Claim was not extinguished under the Kenya Railways Corporation Act, his Claim would still be stale under Section 90 of the Employment Act, 2007. Section 90 places a time-bar of 3 years from the date the cause of action arises. The Claimant should therefore have filed his Claim by 31st March 2011. He was 3 years late, under the Employment Act, when he presented the Claim in 2014.

14. The submission by the Claimant that the Respondent did not raise the defence of time-bar in the Statement of Response is without merit. Objection to the jurisdiction of the Court can be raised at any time before Judgment. Jurisdiction cannot be assumed by the Court, on the ground that a Party failed to raise objection from the outset. There is likewise no merit on the submission that the Claim is in the nature of a continuing injury. The prayers sought are principally terminal benefits under the Employment Act and the CBA. The Claim is an action or proceedings based, or arising out of the Employment Act, or a contract of service in general. If it was a Claim involving continuing injury or damage, when did the injury or damage cease, for purposes of computing the limitation period? The Claimant was not convincing in his submission on continuing injury or damage. He has not persuaded the Court that “*the Claim does not fall within classes of actions that are subject to limitation.*”

15. The Court of Appeal in **Rift Valley Railways [Kenya] Limited v. Hawkins Wagunza Musonye & Another [2016] e-KLR**, held: -

“ For us, it is clear from our reading of Section 90 [aforesaid] that there are no exceptions to the 3-year limitation period, save for cases of continuing injury or damage, where action or proceedings must be brought within 12 months after the cessation thereof. This was not a case of continuing injury or damage, but one of a single act of termination. In any case the Respondents have not specified when injury or damage ceased, for time to have begun to run.”

16. On the strength of this decision, the Court rejects the Claimant’s submission on continuing injury or damage, and upholds Preliminary Objection on Section 90 of the Employment Act.

17. **Objection on both statutes, the Kenya Railways Corporation Act and the Employment Act has merit.**

IT IS ORDERED: -

a. The Preliminary Objection is upheld.

b. The Claim is time-barred and is hereby declined.

c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 12TH DAY OF NOVEMBER 2021.

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James Rika

Judge