

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

PETITION NO. E5629 OF 2020

ANDERSON NG'ANG'A MAINA & 2 OTHERS.....CLAIMANTS

VERSUS

NATIONAL CEREALS AND PRODUCE BOARD.....RESPONDENT

RULING

1. The Respondent asserts that the claim herein is time barred by dint of Section 90 of the Employment Act. The preliminary objection taken is on the grounds:-

- 1) **THAT** this Honourable Court lacks the requisite Jurisdiction to hear and determine this matter, as the suit is time barred pursuant to section 90 of the Employment Act, No. 11 of 2007 as read with Section 4(1) of the Limitations of Actions Act, Cap 22, Laws of Kenya.
- 2) **THAT** the cause of action accrued way back in the year 2009 and thus, the prescribed 3-year limitation of actions period applicable to employment causes has since elapsed.
- 3) **THAT** the Claimants' entire suit is marred with unreasonable delay, an abuse of court's process, for which cause of action is fundamentally defective under the law.

The Respondent thus urges the dismissal of the suit with costs.

2. The Claimants' memorandum of claim dated 12th November 2020 avers that the Claimants were employees of the Respondent engaged at different times and that they worked diligently for the Respondent up and until the month of October 2009 when the Respondent herein through its Human Resources Manager issued them with identical letters all dated 13th October 2009, suspending them with immediate effect until further notice from their employment with the Respondent and further requiring them to show cause why disciplinary action should not be taken against them for negligence of duty by allegedly altering receiving advices or that they allegedly checked and passed for payment the altered invoices. The Claimants aver that the said suspension letters issued by the Respondent required the Claimants herein to respond to the letters within 72 hours from the date of the receipt of the Suspension letters failure to which the Respondent would take appropriate action against them without further correspondence. The Claimants aver that they were further required to hand over any board's property in their possession on receipt of the suspension letter and keep off the Respondents premises until further notice. The Claimants aver they tendered their respective responses within the required 72 hours and further complied with the directives by the Respondent by handing over and keeping off the Respondent's premises awaiting further communication from the Respondent as was instructed in their suspension letter. The Claimants aver that the Respondent did not give any feedback after receiving the response to their suspension/show cause letters but instead caused the Claimants to be arrested by the police and charged at the Chief Magistrates Court on 5th October 2019 with various charges related to negligence of duty for allegedly altering the receiving advices through Nairobi Criminal Case Number 1784 of 2009 which case is still ongoing. The Claimants aver that by virtue of the matters aforesaid, the Claimants have suffered loss and damage and continue to suffer loss and damage as a result of the continued failure by the Respondent to pay to them the amounts due and owing to them for the period of over Eleven (11) years since they were suspended from their employment.

3. Section 90 of the Employment Act provides as follows:-

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.

4. From a plain reading of the law, the claim is, as asserted by the Respondent, quite stale, barred by limitation and worse still vexatious and an abuse of the Court process. The Claimants were required to move the Court by 4th October 2013 as the Employment Act places a limitation of 3 years on their claim since there is no scope for enlargement of time nor does time stop running. Whether the Criminal Case is ongoing or not the time to file suit ran out and the suit must suffer the singular fate it can only suffer – striking out as I hereby do. Suit struck out with costs to the Respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2021

Nzioki wa Makau

JUDGE