



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 167 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

BENSON KITHAKA MUCHUNGU.....CLAIMANT

VERSUS

METAL CROWNS LIMITEDRESPONDENT

RULING

1. By his statement of claim filed on 11th February 2015, the Claimant avers that he was employed by the Respondent as an Assistant Quality Controller on 14th December 2009 at a gross salary of Kshs.50,800.00.
2. His employment was terminated by letter dated 9th January 2012.
3. By a notice of preliminary objection dated 25th September 2020, the Respondent prays that the suit be struck out with costs on grounds that it is statutorily time barred.
4. In the submissions in support of the preliminary objection the Respondent's Counsel Kabue Thumi and Company Advocates submit that the Claimant's letter of dismissal having been issued on 9th January 2012, he ought to have filed his suit by 8th January 2015. That it is therefore time barred having been filed on 11th February 2015.
5. Counsel for the Respondent relies on the Court of Appeal decisions in the case of **David Ngugi Waweru v Attorney General and Another [2017] eKLR** in which it was held that the time limited for filing claims by dint of Section 90 of the Employment Act cannot be extended. The Court rendered itself thus:

"22. It must be restated that time limits in litigation serve an important purpose. Under the LAA they were fairly generous but are now considerably shortened in the Employment Act, 2007. In the Andrew Maina Githinji case it was observed: -

"Time limits in the former Act were subject to the Limitation of Actions Act which in some cases could be as long as 12 years and amenable to extension. By expressly inserting Section 90, the intention of Parliament, in my view, at least in part, must have been to protect both the employer and the employee from irredeemable prejudice if they have to meet claims and counter claims made long after the cause of action had arisen when memories have faded, documents lost, witnesses dead or untraced. It is understandable therefore when the Section peremptorily limits actions by the use of the word "shall".

6. The Claimant did not file any response or submission in opposition to the preliminary objection and the submissions filed in support thereof.
7. Section 90 of the Employment provides 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 on 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 of or in the case of continuing injury or damage within twelve months next after the cessation thereof.

8. As was decided by the Court of Appeal in the two cases cited by the Respondent above, limitation period in employment cases cannot be extended as Section 90 of the Employment Act does not provide for such extension.

9. As was stated in the Owners of the **Motor Vessel “Lillian S” v Caltex Oil (Kenya) Limited [1989] KLR** by Nyarangi JA:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

10. A Court’s jurisdiction flows from either the Constitution or legislation or both. The Supreme Court of Kenya in the case of **Samuel Kamau Macharia v KCB & 2 Others, Civil Application No. 2 of 2011** stated thus:

“A Court’s jurisdiction flows from either the Constitution or Legislation or both. Thus a Court of Law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by Law.”

11. It is evident from the facts pleaded at paragraph 5 of the statement of claim and the letter at appendix 1 of the Claimant’s bundle of documents that the suit was filed out of time.

12. Further, the statement of claim on record is not dated or signed. The verifying affidavit in support thereof as is also undated and unsigned.

13. **For the foregoing reasons, this Court has no jurisdiction to hear the Claimant’s case and must down its tools.**

14. **The suit is accordingly struck out with costs.**

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF DECEMBER 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE