



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 323 OF 2018

MELKOR POLA KALAMA.....CLAIMANT

VERSUS

BROOKSIDE DAIRY LIMITED.....RESPONDENT

RULING

1. This ruling proceeds from a Preliminary Objection raised by the Respondent by notice dated 16th July 2018 to the effect that the Claimant's claim is statute barred by dint of Section 90 of the Employment Act.
2. In spite of due service, the Claimant opted not to respond to the objection.
3. The Respondent states that the Claimant having been dismissed on 29th August 2012, his claim filed on 15th May 2018 is way out of time.
4. This objection is premised on Section 90 of the Employment Act which provides as follows:

90. Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, 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 after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

5. At paragraph 8 of his Statement of Claim dated 15th May 2018 and filed in court on the same date, the Claimant pleads the date of his dismissal as 29th August 2012.
6. In its decision in *Attorney General & another v Andrew Maina Githinji and another [2016] eKLR* the Court of Appeal affirmed that in a claim arising from termination of employment, the cause of action crystallises when the termination letter is issued. This is when time begins to run.
7. The Claimant's claim ought to have been filed before the lapse of three years which would have been 28th August 2015. The current claim is therefore way out of time and the Court has no jurisdiction to entertain it.
8. The claim is therefore struck out with no order for costs.
9. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 23RD DAY JANUARY 2020

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JUDGE

Appearance:

No appearance for the Claimant

Mr. Bwika for the Respondent