



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 278 OF 2018

PAUL KIPRUTO SANG CLAIMANT

VERSUS

ATTORNEY GENERALRESPONDENT

R U L I N G

1. The respondent in this matter raised a preliminary Objection in the main that the claim was res judicata and that the claim offended the mandatory provisions of Section 4 of the Limitation of Actions Act.
2. In support of the PO, Ms Wangechi for the A.G submitted that the Claimant filed a suit in the Chief Magistrates Court being CMCC No 4418 of 2007 challenging his dismissal and praying for damages. The respondents filed a defence. The claim was then head and the Court delivered its judgement on 15th June, 2012 in which it ordered the respondent to pay damages.
3. The respondent paid the damages. The issues in the present suit were therefore the same issues in CMCC NO. 4418 of 2007. In the new suit the Claimant was now seeking reinstatement. There was no material difference with the suit before the Magistrates Court.
4. On the issue of limitation, Counsel submitted that if one was to treat the suit is being filed for the first time, the cause of action arose in 2006. The same was therefore clearly statute barred.
5. The Claimant did not dispute the fact that the dispute had been decided by the Chief Magistrates Court however it was the Claimant's contention that upon declaration that the termination of the Claimant was unlawful and awarded him damages, the Claimant's status reverted to his benefit and privileges which the respondent had denied him owing to the summary dismissal.
6. The dispute over the Claimant's dismissal was the issue between the parties before the Chief Magistrates Court. The Court heard the matter and pronounced itself the way it did. Neither party appealed. The respondent has in fact stated that it honoured the Court's judgement and paid the Claimant. The matter was therefore finally decided between the parties. To seek to reopen the same under the guise that the Claimant is seeking to enforce a declaration of the trial Court is an abuse of the Court process.
7. Reinstatement to employment was one of the remedies available to the Claimant when he filed the initial suit. He never prayed for it or if he did the Court never granted it. In the latter scenario, the only option left to the Claimant was to seek either review of the Court's judgement to seek reinstatement or file an appeal seeking the same.
8. Whichever way one looks at it the present claim it is obviously res judicata hence an abuse of the Court process. The Po therefore succeeds with the consequence that the suit is hereby struck out with costs.
9. It is so ordered.

Dated at Nairobi this 13th day of March, 2020

Abuodha Jorum Nelson

Judge

Delivered this 13th day of March, 2020

Byram Ongaya

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.