



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE 507 OF 2018

MOHAMED IDDI JUMA.....CLAIMANT

VS

KENYA PORTS AUTHORITY.....RESPONDENT

RULING

1. What is before me is the Respondent's Preliminary Objection raised by notice dated 22nd October 2020 and filed in court on 23rd October 2020.

2. The Objection is based on the following grounds:

a. That the Court is divested of jurisdiction since the Claimant's claim has been instituted contrary to Section 66 of the Kenya Ports Authority Act;

b. That the claim contravenes Section 90 of the Employment Act.

3. The Objection was urged by way of written submissions.

4. The Respondent's Objection is premised on Section 66 of the Kenya Ports Authority Act which provides:

66. Where any action or other legal proceeding is commenced against the Authority for any act done in pursuance or execution or intended execution of this Act or any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or any such duty or authority, the following shall have effect: -

a. The action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent.

b. The action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of continuing injury or damage, within six months next after cessation thereof.

5. In the submissions filed on behalf of the Respondent on 23rd October 2020, reference was made to the decision in *Kenya Ports Authority v Cyrus Maina Njoroge [2018] eKLR* where the Court of Appeal held that an employment claim brought against the Kenya Ports Authority after twelve months post accrual of the cause action is statute barred.

6. In his written submissions filed on 24th November 2020, the Claimant urged that limitation of employment actions ought to be governed by the Limitation of Actions Act and the Employment Act and not by an incorporation statute such as the Kenya Ports Authority Act.

7. The Claimant further submitted that his claim was founded on a continuing breach of his fundamental rights and should therefore not be subjected to limitation of time.

8. I have looked at the Claimant's Memorandum of Claim and find that although the Claimant alleges discrimination in the body of his claim, all his prayers relate to loss of salary and allowances.

9. To my mind, this is a straight forward employment dispute which does not raise a constitutional moment.

10. That said and in light of *Kenya Ports Authority v Cyrus Maina Njoroge* (supra) which binds this Court, I find and hold that the Claimant's claim was filed out of time and the Court lacks jurisdiction to entertain it.

11. The claim is therefore struck out.

12. Each party will bear their own costs.

13. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 17TH DAY DECEMBER 2020

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Tindika for the Claimant

Miss Kamau for the Respondent