



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 280 OF 2014**

**KHALID HANTOOSH.....CLAIMANT**

**VERSUS**

**POSTAL CORPORATION OF KENYA.....RESPONDENT**

**RULING**

1. This ruling responds to a Preliminary Objection raised by the Respondent by notice dated 20<sup>th</sup> July 2018 stating:

- a) That this suit is statute barred pursuant to Section 24 of the Postal Corporation of Kenya Act No 3 of 1998 and is therefore unsustainable and ought to be struck out;
- b) That by dint of the mandatory provisions of Section 24(b) of the Postal Corporation of Kenya Act No 3 of 1998, this Court lacks jurisdiction to hear and determine the suit;
- c) That the suit is bad in law, a nullity and should be struck off with costs.

2. The objection was urged by way of written submissions. In the submissions filed on behalf of the Respondent on 20<sup>th</sup> November 2018, reference was made to Section 24 of the Postal Corporation of Kenya Act No 3 of 1998 which provides:

***24. Limitation of Actions***

***Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution, of this Act, or the Kenya Communications Act, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act, or the Kenya Communications Act, 1998 or of any such duty or authority, the following provisions shall have effect-***

***(a) the action or legal proceeding shall not be commenced against the Corporation until at least one month after a written notice containing the particulars of the claim, and of intention to commence the action or legal proceedings, has been served upon the Postmaster General 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 a continuing injury or damage within six months next after the cessation thereof.***

3. The Respondent therefore submits that the Claimant, having been dismissed from employment on 19<sup>th</sup> October 2004, his claim filed on 21<sup>st</sup> June 2006 was beyond the statutory period provided in law. Further the Respondent states that the Claimant did not issue the requisite one month notice as provided under Section 24 of the Postal Corporation of Kenya Act.

4. The Claimant filed his submissions on 22<sup>nd</sup> January 2019. On the issue of the one month statutory notice, he states that such notice was indeed served on the Respondent prior to filing of the suit.

5. Regarding the issue of limitation of time, the Claimant takes the view that time did not begin to run against him, until final exhaustion of the internal grievance handling procedure at the Respondent Corporation.

6. By its application, the Respondent challenges the jurisdiction of the Court to entertain the Claimant's claim and as held in the celebrated case of *The Owners of Motor Vessel "Lillian S" v Caltex Oil (K) Ltd [1989] KLR*:

***“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 and a court of law downs tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”***

7. The Claimant submits that time did not begin to run against him until completion of the internal grievance handling processes were fully exhausted. With much respect, this view goes against settled jurisprudence on this issue. In ***Attorney General & another v Andrew Maina Githinji & another [2016] eKLR*** the Court of Appeal confirmed that in a claim arising out of termination of employment, the cause of action arises at the date of termination.

8. Further, in ***Rift Valley Railways v Hawkins Wegunza Musonye & another [2016] eKLR*** the Court of Appeal stated thus:

***“Where a statute limits time for bringing an action no court has power to extend that time, unless the statute itself allows extension of time.”***

9. I do not need to say more. From the pleadings on record, the Claimant’s claim was filed out of statutory time and the Court has no jurisdiction to entertain it. That being the case, the said claim is hereby struck out.

10. Each party will bear their own costs.

11. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 28<sup>TH</sup> DAY OF FEBRUARY 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Mwakisha for the Claimant

Mr. Mutugi for the Respondent