



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAKURU

CAUSE NO.350 OF 2016

LILIAN NJERI MBUGUA.....CLAIMANT

VERSUS

THE PRINCIPAL SECRETARY BOARD OF MANAGEMENT

CHEPTOROI SECONDARY SCHOOL.....RESPONDENT

RULING

The respondent, The Principal Secretary Board of Management, Cheptoroi Secondary School filed Notice of Preliminary Objections on 21st August, 2017 on the grounds that;

The suit offends the mandatory provisions of section 90 of the Employment Act.

The suit should be dismissed.

Both parties addressed the objections by written submissions.

The respondent submits that under section 90 of the Employment Act an employment dispute should be lodged with the court within 3 years from the date the cause of action arose. Section 3(2) of the Public Authorities Limitation Act provides that no pleadings founded on contract shall be filed against the government or a local authority after the end of 3 years from the date the cause of action arose.

The claimant filed claim seeking payment of leave allowances for 8 years and for payments for duties undertaken as accounts clerk with the respondent. The alleged breach of contract is stated to have occurred in the year 2004 until 2013 for duties undertaken as an accounts clerk in the year 1990.

Such alleged breaches occurred over 8 years before the suit was filed and is time barred as held in **Divercon Limited versus Samani**. The claim is time barred and should be dismissed.

The claimant submits that the memorandum of Claim was filed on 15th September, 2016 for wrongful dismissal of the claimant from employment. The claimant had been employed by the respondent in January, 1984 and worked until 30th September, 2013 when employment was terminated. Under the provisions of section 90 of the Employment Act the claim is filed within time.

The single issue for determination is whether the claim filed is time barred under the provisions of section 90 of the Employment Act, 2009 which 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 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 or in the case of continuing injury or damage within twelve months next after the cessation thereof.

Claims relating to a contract of employment should be lodged with the court within 3 years from the date the cause of action arose.

At paragraph 4 of the Memorandum of Claim the claimant pleads that employment terminated on 30th September, 2013 and a Certificate of

Service was issued in this regard stating employment terminated on 30th September, 2013.

The claim is also that the claimant had worked for the respondent from the year 2004 without taking annual leave save for the year 2012 and for the other 8 years, no annual leave was allocated.

The claimant has also made claims for the payment of gratuity, notice, leave allowance and unpaid salaries.

By operation of section 90 of the Employment Act, 2007 where employment terminated on 30th September, 2013 any dispute arising from thereof or therefrom should have been lodged with the court on or before the 30th of September, 2016.

The claim herein being filed on 15th September, 2016 is within time for the claimant to ventilate her issues against the respondent and which should be heard in their merits.

The objections that the suit is filed contrary to the provisions of section 90 of the Employment Act, 2007 and noting the date the suit was filed is without merit and is hereby dismissed with costs to the claimant.

Delivered at Nakuru this 28th day of February, 2019.

M.MBARU JUDGE

In the presence of: