



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 554 OF 2017**

**BETWEEN**

**MUDHARI T. ANWAR.....CLAIMANT**

**VERSUS**

**KENYA PORTS AUTHORITY.....RESPONDENT**

**RULING**

1. The Claimant was employed by the Respondent in 1987. Initially he was a Casual Employee, later confirmed to permanent and pensionable terms and employed as a Driver.
2. He was interdicted for careless driving, and subsequently retired in public interest on 2<sup>nd</sup> January 2013. He states he appealed twice against the decision to retire him. The 2<sup>nd</sup> Appeal was heard on 17<sup>th</sup> July 2013. There was no communication from the Respondent subsequent to the Appeal.
3. The Claimant filed this Claim on 12<sup>th</sup> July 2017. He seeks an order for reinstatement, or payment of terminal benefits and compensation, amounting to Kshs. 9,492,750.
4. On 18<sup>th</sup> October 2018, the Respondent filed a Notice of Preliminary Objection. It is submitted that the Claim was filed outside the time limit of 1 year from the date the cause of action arose, given under Section 66 of the Kenya Ports Authority Act, Cap 391 the Laws of Kenya, and also outside the 3 year limit given under Section 90 of the Employment Act 2007.
5. The Respondent relies on various decisions of the Court of Appeal of Kenya, the most recent and relevant being ***Civil Appeal No. 89 of 2017 between Kenya Ports Authority v. Cyrus Maina Njoroge***.
6. The Court of Appeal affirmed that Section 66 of the Kenya Ports Authority Act, applies to contracts of employment at the KPA. Employees must file employment disputes within 1 year of termination, regardless of the time taken in engaging and exhausting internal dispute resolution mechanisms available at the workplace.
7. This Court has pointed out that it does not agree with the decision of the Court of Appeal cited above. The correct exposition of the law of limitation under section 66 of the Kenya Ports Authority Act, was given by Hon. Justice J.B. Ojwang' in the interpretation of a similar provision, Section 24 of the Postal Corporation Act, in ***Postal Corporation Act of Kenya v. Peter Achar & Another [2012] e-KLR***.
8. Section 66 of the Kenya Ports Authority Act, like Section 24 of the Postal Corporation Act, is not applicable to matters relating to the Corporation and its Employees. These provisions apply with regard to acts done by the Corporation, in execution of their constitutive Acts of Parliament. The provisions relate to statutory activities of the Corporation, rather than to the Corporation's in-house relations with those in its employ, the High Court stated. Further support of this interpretation is to be found in the Judgment of Hon. Justice J. L. Onguto, in ***Telkom Kenya Limited v. Kenya Railways Corporation [2018] e-KLR***. It cannot be the intention of Parliament, that Employees of State Corporations are compelled to present employment claims against their Employers, within a shorter period than given under the Employment Act 2007.
9. The E&LRC, as held in ***Cause Number 812 of 2016 between Juma Abdalla Gafu v. Postal Corporation of Kenya***, must however defer to the decisions of the Court of Appeal, and hold that the Claim herein, was filed out of time allowed under Section 66 of the Kenya Ports Authority Act. It is not necessary to look into the other limitation under Section 90 of the Employment Act.
10. Existing and future Claims involving KPA and its Employees, must take stock of Section 66, and abide by the interpretation of the Court

of Appeal of Kenya.

**IT IS ORDERED:-**

- a) The Claim is rejected for want of jurisdiction under Section 66 of the Kenya Ports Authority Act.*
- b) No order on the costs.*

**Dated and delivered at Mombasa this 22<sup>nd</sup> day of February 2019.**

**James Rika**

**Judge**