



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE NO. 55 OF 2018**

**ROSE LUNANI LUKORITO.....CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**R U L I N G**

A preliminary objection was raised before Hon Wasilwa J on the grounds that the suit was time served on 19.9.2014 and a ruling reserved for 25.9.2014.

A careful perusal of the record does not show that Hon. Wasilwa J made a ruling on this point at all. There is no written ruling in the file and these parties have been of no assistance on this point. Despite the Claimant raising the issue of resjudicata on this point, the advocate has not provided the alleged ruling by Wasilwa J nor has the Claimant stated the date when the alleged ruling was delivered by Wasilwa J.

This being the case the court is left with no option but to determine the Preliminary Objection afresh.

From the facts not in dispute, the Claimant was dismissed from employment on 5<sup>th</sup> October, 2006. The suit was then filed on 13<sup>th</sup>/12/2012 more than six (6) years from the date the cause of action arose.

On the authority of the **Court of Appeal in Nairobi Civil Appeal No. 147 of 1997; Divecon Limited -vs- Shirinkhanu Sadrudin Samani** in which the court rendered itself.

***“ To us, the meaning of Section (1) of the Limitation of Actions Act is clear and beyond doubt. It means no one shall have the right or power to bring after the end of six years from the date on which the cause of action accrued in an action founded in contract. The collorary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action.”***

The six (6) year limitation period is applicable in this suit. The suit was clearly filed after expiry of a period of six (6) years. Accordingly, the court lacks jurisdiction to entertain this suit and strikes out the entire suit with no order as to costs.

**DATED, SIGNED and DELIVERED at BUNGOMA this 1<sup>st</sup> day of FEBRUARY, 2019.**

**HON. M. N. NDUMA, JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**BUNGOMA**

**Appearances:**

Mr. Anyuor for the Respondent/Objector

Mr. Kraido for Claimant

Chrispo: Court Assistant.