



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

INDUSTRIAL CAUSE NO. 29 OF 2018

(Before Hon. Justice Mathews N. Nduma)

METHUSELLAH OYARO SERETI.....CLAIMANT/RESPONDENT

VERSUS

KENYA SEED COMPANY LIMITED.....RESPONDENT/APPLICANT

RULING

1. Application dated 3rd May 2018 seeks the court to strike out the suit in that it violates the provisions of *Section 90 of the Employment Act 2007* since it was filed upon expiry of three (3) years from date the cause of action arose on 28th January 2013 and is therefore time barred.
2. This is a point of law that ought to be raised as a preliminary objection but not by filing a notice of motion application.
3. The application was nonetheless opposed vide a replying affidavit filed on 17th September 2018.
4. The claimant/respondent states that he was not served with purported letter of termination dated 28th January 2013. The claimant believed he was under suspension until the criminal case against him was concluded on 3rd February 2017.
5. That it was then that he went back to work requesting to be reinstated upon acquittal by the magistrate court.
6. That the cause of action according to the claimant/respondent started running on 3rd February 2017 when the purported letter of dismissal was shown to him.
7. That the suit was filed on 1st February 2018 about one year from the date of the discovery.
8. That the point raised by the applicant is not a pure point of law and requires determination of dispute of fact to be determined.
9. However, it is the court's considered finding from the facts disclosed on the face of the pleadings, that this suit was filed within three (3) years from the date the cause of action arose being the 3rd February 2017.
10. The application lacks merit and is dismissed with costs in the cause.

Ruling Dated, Signed and delivered this 21st day of March, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Nyamwea for Claimant/Respondent

Kinei for Respondent/Applicant

Chrispo – Court Clerk