



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

ELRC CASUE NO. 17 OF 2017

ALFRED KISIANGANI NYONGESA.....CLAIMANT

VERSUS

WEST KENYA SUGAR COMPANY LTD.....RESPONDENT

R U L I N G

The Respondent has raised preliminary objection to the suit filed by the Claimant on 14th September 2017. The nub of the objection is that the suit is statute barred by dint of Section 90 of the Employment Act 2007 in that it was filed upon expiry of three year period from the date the cause of action arose.

In paragraph 3 of the statement of claim, the Claimant has pleaded that he worked for the Respondent as an electrician between the year 2006 until the year 2008 when he was wrongfully dismissed from duty. The Claimant prays for award of General damages for the unlawful dismissal.

In the Claimant's written statement attached to the Claimant, the Claimant gives the specific date when he was dismissed from employment to be the 25th August 2008.

From this fact which is not in dispute three year period expired on 25th August 2011 from the date the cause of action arose.

It is very clear that this suit has been filed more than eight (8) years from the date the cause of action arose.

Following the decision of ELRC in **Nicodemus Marel -vs- Jimsels Limited (2014) eKLR; Kamukame Tea Factory Company Ltd -vs- Joshua Nyekori (2015) eKLR**, this court lacks jurisdiction to entertain a suit that has been filed upon expiry of three (3) years from the date the cause of action arose.

Ongaya J held in Nicodemus Marel case (supra).

“ Section 90 of the Employment Act provides a time of limitation of 3 years and in an appropriate case, exception may exist like is envisaged in Section 39 of the Limitation of Actions Act. The court finds that the present case has not established any grounds for such exception”.

In the present case no exception has been urged to warrant extension of time under Section 39 of the Limitation of Actions Act.

In the case of Devicon the court of Appeal stated categorically that no court has jurisdiction to entertain a matter founded on contract upon expiry of Limitation period and no court has authority to extent such time.

Accordingly, the court lacks jurisdiction to entertain the claims by the Claimant and same is struck out for want of jurisdiction.

DATED, SIGNED and DELIVERED at BUNGOMA this 30Th day of MAY, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Mr. Aledo for Respondent/objector

Mr. Sichangi for Claimant/Respondent

Chrispo: Court Assistant.