



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 392 OF 2015**

*(Before Hon. Justice Mathews N. Nduma)*

**KENYA UNION OF COMMERCIAL, FOOD AND**

**ALLIED WORKERS..... CLAIMANT**

**VERSUS**

**NATIONAL SOCIAL SECURITY FUND.....RESPONDENT**

**RULING**

1. The respondent raised preliminary objection to the claim in the memorandum of response filed on 5<sup>th</sup> November 2015 to the effect that the suit is time barred by *dint of Section 90 of the Employment Act, 2007*.
2. From the facts not in dispute, the grievants were dismissed from employment on 21<sup>st</sup> September 2011 and the claimant filed the suit on their behalf on 5<sup>th</sup> November 2015 three years and Eleven months from the date the cause of action arose.
3. Following the decision in the case of *Fred Mudave Gugo vs G4S Security Services (K) Ltd (2014) eKLR and the Court of Appeal decision in Devicon case*, the court lacks jurisdiction to entertain a suit filed more than three (3) years from the date the cause of action arose.
4. In the present case, no application for extension of time was filed prior to the filing of the suit. Even if one had been filed, the extension of time cannot be granted on a claim founded on contract of employment.
5. Accordingly, the court lacks jurisdiction to entertain the suit out of time and the suit is struck out with no order as to costs.

**Ruling Dated, Signed and delivered this 30<sup>th</sup> day of July, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Dickens Ouma for Respondent/Objector

Mr. Charles Egesa for Claimant

Chrispo – Court Clerk