



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 1655 OF 2017

WILLIAM KAMAU NGANGA CLAIMANT

v

LARI DAIRIES ALLIANCE LTD RESPONDENT

RULING

1. In a *Memorandum of Claim* lodged with the Court on 24 August 2017, William Kamau Nganga (Claimant) stated the Issues in Dispute as
 1. Unfair, irregular and unlawful termination of the Claimant's employment with the Respondent.
 2. Failure by the Respondent to follow the trite provisions of the Employment Act No. 11 of 2007 and due process in terminating the Claimant's employment and breach of Article 41 of the Constitution.
 3. Payment of the Claimant's terminal dues and 12 months' gross salary compensation for unfair termination.
2. On 9 October 2017 the Respondent filed a *Notice of Preliminary Objection* contending that
 1. The suit, as instituted, is bad in law and incompetent and the same ought to be struck out with costs.
 2. The Claim is time barred under the provisions of section 90 of the Employment Act.
 3. The Claimant, therefore, has no *locus standi* to bring the current proceedings before this Honourable Court.
 4. This Honourable Court, therefore, lacks jurisdiction to hear the same.
3. In response to the *preliminary objection*, the Claimant filed submissions on 29 November 2017. The Respondent filed *List of Authorities* on 1 July 2019, and the Court took brief submissions on 8 July 2019.
4. In paragraph 9 of the *Memorandum of Claim*, the Claimant pleaded that the Respondent terminated his employment on account of redundancy on 27 February 2009.
5. The Claimant in his submissions, contended that the issue of limitation was *procedural* which should not triumph over the need to do substantive justice. The Claimant particularly called to his aid Article 159 of the Constitution.
6. The cause of action advanced by the Claimant is clearly employment contract anchored.
7. In terms of section 90 of the Employment Act, 2007, the Claimant should have instituted legal proceedings within 3 years.
8. The 3 years lapsed on or around 26 February 2012. The instant Cause was filed on 24 August 2017, some 8 years after the cause of action accrued.
9. The cause of action, in the view of the Court, is caught up by the limitation prescriptions of section 90 of the Employment Act, 2007.
10. And because limitation is not merely a procedural issue but goes to jurisdiction (see *Divecon v Samani* (1995-1998) EA 48), the Court will uphold the preliminary objection and strike out the *Memorandum of Claim*.

11. No order as to costs.

Delivered, dated and signed in Nairobi on this 12th day of July 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Ochieng instructed by J.M. Njengo & Co. Advocates

For Respondent Mr. Munyori instructed by Kamau Kuria & Co. Advocates

Court Assistant Lindsey