



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

CAUSE NO. 31 OF 2018

ISAIAH SIMIYU MULONGO.....CLAIMANT

VERSUS

NATION MEDIA GROUP.....RESPONDENT

R U L I N G

The respondent raised Primary Objection to wit that the suit is statute barred by dint of the Limitation of Actions Act Cap 22 Laws of Kenya. That the court Lacks Jurisdiction to entertain the matter.

On the facts set out in the statement of claim filed on 20th April, 2018, the Claimant worked for the Respondent from 2004 until the year 2009 when his services were terminated. He claims notice pay, leave allowance, Gratuity for the five year period served and medical allowance in the sum of Kshs 142,000.

The suit was filed on 20th April, 2018 more than eight (8) years from the date the cause of action arose.

The Claimant did not apply for extension of time within which to file the suit. No justification has been put forth therefore by the Claimant to warrant filing of this suit founded on contract out of time.

Section 4(1) of the Limitation of Actions Act Cap 22 Laws of Kenya provides that no suit based on contract should be filed after three years since the cause of action arose have expired.

This court is bound by the decision of the Court of Appeal in Nyeri Civil Appeal No. 21 of 2015, Attorney General & another –vs- Andrew Maina Githinji & another (2010) eKLR in which the court per Waki, Nambuye & Kiage JJA held no suit based on contract may be filed upon expiry of three year limitation period.

The respondent in the cited case filed suit upon conclusion of a criminal trial just like in the present case after the limitation period of 3 years had elapsed. The Court of Appeal cited the provisions of Section 90 of the Employment Act 2007 which states.

“ Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act (Cap 22) no Civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation action thereof.”

This suit was filed whilst the 2007 Act was operational and this provision is applicable to this suit.

The Court of Appeal held “ Having found that the cause of action arose on 2nd February 2010 and that the Claim was filed on 16th June 2014, it follows by simple arithmetic that the Limitation period of 3 years was surpassed by a long margin. The claim was time barred as at 1st February 2013 and so I hold”.

In the present case the cause of action having arisen in the year 2009 the 3 years period was surpassed by end of the year 2013. The suit was filed 8 years after the expiry of the limitation period.

The court lacks jurisdiction to entrain the suit and the same is struck out with no orders as to costs.

DATED, SIGNED and DELIVERED at BUNGOMA this 26Th day of SEPTEMBER, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearance

Mr. Okule for the Respondent/Objector

Mr. Sichangi for the Claimant/Respondent

Joy: Court Assistant.