



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE 2635 OF 2016**

*(Before Hon. Lady Justice Maureen Onyango)*

**NAOMI ACHIENG ALUOCH.....CLAIMANT**

**VERSUS**

**FRIGOKEN LIMITED.....RESPONDENT**

**RULING**

The application for determination before me is dated 10<sup>th</sup> May 2019. In the application the respondent prays for the following orders –

- (a) That the Court be pleased to order that the entire claim herein be and is hereby struck out and or dismissed.
- (b) That the Court be pleased to make such further and or other orders as it may deem just, fair, reasonable and appropriate in the circumstances in order for the ends of justice to be met.
- (c) That the costs of this application and the claim be provided for.

In the grounds and affidavit of SABERIA GACHUNGI the respondent states that –

1. The cause of action arose on 31<sup>st</sup> December 2011 when the Claimant alleges to have been terminated from employment by the Respondent/Applicant.
2. That pursuant to the provisions of Section 90 of the Employment Act of Kenya, 2007 any claim based or arising out of the said Act or a contract of service in general shall lie or be instituted unless it is commenced within three (3) years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve (12) months next after the cessation thereof.
3. That in the circumstances disclosed herein above, this claim ought to have been filed on or before 31<sup>st</sup> December 2014 but instead, the claim was filed on 28<sup>th</sup> December 2016, two (2) clear years after expiry of the statutory limitation period.
4. That this claim is an abuse of the process of court and the same should be dismissed with costs in the interests of justice and fairness.

The respondent further filed a supplementary affidavit of ELAINE WAHITO GATHIMBO, Counsel for the respondent sworn on 19<sup>th</sup> September 2019 in which she elaborated the efforts she made to serve the claimant.

The claimant did not file a response to the application and did not attend court on the date of hearing on 23<sup>rd</sup> September 2019. Counsel for the respondent urged the court to grant orders as prayed in the application, as it is undefended.

I have considered the application and pleadings especially the Memorandum of Claim and witness statement filed by the claimant in which she states that she was dismissed from employment on 31<sup>st</sup> December 2011. The suit having been filed on 28<sup>th</sup> December 2016, is time barred. Section 90 of the Employment Act, which is couched in mandatory terms provides for employment suits to be filed within 90 days. The present suit was filed just 3 days shy of 5 years from date of accrual of the cause of action on 31<sup>st</sup> December 2011.

**The Memorandum of Claim is accordingly struck out and the suit dismissed on grounds that is time barred. There shall be no orders for costs.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2019**

**MAUREEN ONYANGO**

**JUDGE**