



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**CAUSE NO 24 OF 2019**

**JAPHET JESANGA SONGOK.....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**NATIONAL INTELLIGENCE SERVICE....2<sup>ND</sup> RESPONDENT**

**JOSHUA ABUGA MOSOTI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. An Objection has been raised as to the competence of the present suit in the light of section 90 of the Employment Act which set the limitation period for claims based on the Act and contract of employment to 3 years.
2. The issue between the parties seem to be when the cause of action occurred. The respondent submits that the Claimant was dismissed on 31<sup>st</sup> July, 2015 and therefore when the claim ought to have been filed on or before 27<sup>th</sup> July, 2018 however the present claim was filed on 27<sup>th</sup> June, 2019 which according to the respondent was beyond the limitation period by one year.
3. The Claimant however contended that his second appeal from the dismissal was decided on 1<sup>st</sup> July, 2016 hence time began to run from the date of the outcome of the appeal was known hence the suit was filed was till within time.
4. This Court held in the case of Hilenion Mwabolo v KCB (2013) eKLR that the accrual of a cause of action in a claim emanating from an employment contract takes effect from the date of termination as stated in the letter communicating the termination. The fact that an employee whose employment has been terminated seeks a review or an appeal does not mean that accrual of the cause of action is held in abeyance until a final verdict on the review or appeal. A similar position has been upheld by the Court of Appeal.
5. An appeal against termination does not until allowed disturb the decision to terminate. The employees service remains terminated. There is no barrier in law against filing a suit before this Court upon termination while at the same time appealing against a termination through the internal disciplinary mechanism. The Court however does have power to stay a suit pending the outcome of the internal appeal process however nothing prevents an employee aggrieved with the termination from moving the Court within the limitation period.
6. Section 90 of the Employment Act is couched in mandatory terms and once time lapses, the Court lacks the jurisdiction to extend time. This is the more reason why it would be safer to move the Court immediately the termination occurs if aggrieved even if an appeal has been preferred through the internal appeal process.
7. In the circumstances, the suit having been filed outside the set limitation period, the Court lacks jurisdiction to entertain the same. The same is therefore struck out with no order as to costs.
8. It is so ordered.

**Dated at Eldoret this    day of    2019**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 28<sup>th</sup> day of November, 2019**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**