



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 129 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 17th December, 2019)

EDWARD ADUNDO APOTO.....CLAIMANT

VERSUS

HELTZ DRIVING SCHOOL.....RESPONDENT

RULING

1. Before this Court is the Respondent's Notice of Preliminary Objection filed on 27th September 2019 which is based on the following grounds-

a. THAT the claim herein squarely offends the clear and mandatory provisions of section 90 of the Employment Act Cap 226 (sic) with regards to Limitation of Actions.

b. THAT the claim herein is expressly and clearly barred by operation of law and statute.

c. THAT the Honourable Court does not have jurisdiction to entertain this matter.

d. THAT the claim herein is incompetent, a non-starter, frivolous, an abuse of the court process and the same be struck out with costs.

2. The Preliminary Objection was disposed of by way of written submissions where the Respondent filed its submissions on 8th October 2019 while the Claimant filed his on 15th October 2019.

Submissions by the Parties

3. The Respondent submits that the claim offends the provisions of Section 90 of the Employment Act because by the time the Claimant was filing his memorandum of claim on 10th April 2014, it was already time barred. It is their position that by filing the claim after 5 years, the Claimant was indolent.

4. The Respondent therefore submits that the Claimant lacks the *locus standi* to appear before this Court hence the claim should be struck off. The Respondent relies on the cases of **Mathew Kamanu Mwaura vs. Permanent Secretary Office of the President Provincial Administration and 2 Others [2018] eKLR**, **G4S Security Services (K) Limited vs. Joseph Kamau & 468 Others [2018] eKLR** and **Ephraim Gachigua Mwangi vs. Teachers Service Commission & Board of Management Thogoto Teachers College [2018] eKLR**.

5. The Claimant submits that a Preliminary Objection and the issue of jurisdiction ought to be raised at the earliest opportune time. He relies on the case of **The Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Limited** and **Republic vs. Chief Registrar of the Judiciary & 2 Others ex parte Riley Services Limited [2015] eKLR** where it was held that it was preferable for a Preliminary Objection to be raised at the earliest possible opportunity.

6. The Claimant therefore submitted that the Preliminary Objection ought to be struck off with costs for having been filed over 5 years after the cause was filed.

7. I have examined the averments of both Parties. From the Memorandum of Claim filed on 5/2/2014, the Respondent chased him away and threatened him with arrest and warned him against stepping into Respondent's premises on 9/11/2009.

8. In my view, the cause of action arose then on 9/11/2009 and by virtue of Section 90 of Employment Act 2007 this claim should have been

filed by 8/11/2012 to cover the 3 year limitation period.

9. This Claim having been filed on 5/2/2014, was filed outside the time envisaged and the same is therefore time barred. This Court lacks jurisdiction to hear the same.

10. The Application is therefore merited and this claim is therefore dismissed in its entirety.

11. There will be no order of costs.

Dated and delivered in open Court this 17th day of December, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of

Esami holding brief Nyamu for Claimant – Present

Respondent – Absent