



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.106 OF 2018

WARIO GUYO.....1ST CLAIMANT

JOHN BARAKA OLE CHEVERA.....2ND CLAIMANT

VERSUS

DELAMERE ESTATES LIMITED.....RESPONDENT

RULING

The respondent, Delamere Estates Limited filed Notice of Preliminary Objections on the grounds that the claim herein is statute barred by application of section 4, 27 and 28 of the Limitation of Actions Act and by application of section 90 of the Employment Act, 2007 and should be struck out.

The parties addressed the objection by way of oral submissions and the respondent thus submitted that under paragraph 5 of the Memorandum of Claim the claimants avers that their claims arose following work injury which arose in the years 2002 and 2004 respectively and the claims were filed on 17th April, 2018 a period of over 16 and 14 years past. Section 90 of the Employment Act, 2007 give a time limitation of 3 years and even where such claims were based on tort the time allowed under the Work Injury Benefits Act, 2007 to address is way past and the suit ought to be struck out.

The claimants submitted that the cause of action arose when the respondent failed and refused to pay to the claimants what had been agreed between the parties and not the year 2004 or 2006 as alleged. Parties went for conciliation and the court labour officer directed the respondent to pay and which was communicated in the year 2012 and the facts of the agreement between the parties removed the cause of action to the time of such agreement. Time only started running upon the refusal to pay as of 28th August, 2017 when the last communication was done. The objections thus made have no basis and should be dismissed to allow the claimants a fair hearing and payment for work injury.

The claimants filed the Memorandum of Claim on 17th April, 2018 on the facts that they were individually injured while at work in the course of their work duties with the respondent in the year 2002 and 2004. They went through the provisions of Workmen's Compensation Act and awarded Ksh.113, 987.60 and Ksh.35, 817.00 respectively but the respondent has since failed to pay and now claim the payment of such dues and breach and non-performance of undertaking contract.

Where there was work injury to the claimants in the years 2002 and 2004, the Work Injury Benefits Act, now repealed applied. Any claims arising therefrom and based on the date the cause of action arose should have been addressed under the provisions of the Limitation of Actions Act and within the provisions of section 4.

4. Actions of contract and tort and certain other actions

(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

(a) Actions founded on contract;

(b) Actions to enforce a recognizance;

(c) Actions to enforce an award;

(d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(e) Actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

(2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.

Section 28 of the Limitation of Actions Act allowed for the extension of time where a party found himself unable to file suit for good cause. However the court had to be moved in this regard to allow for the filing of any claim arising under the provisions of section 4 thereof be filed out of time. Such provisions have not been invoked. Even where the claimants had invoked such a provision, to file a claim with the court over a matter which arose in the years 2002 and 2004 by operation of section 90 of the Employment Act, 2007 is time barred as held in the case of **Justine S. Sunyai versus Judicial Service Commission & another [2017] eKLR;**

Time for filing suits with the court cannot be extended as the court is denied such jurisdiction under the provision of section 90 of the Employment Act, 2007 read together with section 51 of the Work Injury Benefits Act, 2007 which allow for 3 years and the filing of appeals respectively. The Work Injury Benefits Act, 2007 being the precursor to the Workmen's Injury Act, now repealed only allow the court to address appeals form the Director's decision as held in **Supreme Court Petition No.4 of 2019 Law Society of Kenya versus the Attorney General & another.**

The rationale is that there should be no unreasonable delays in filing claims to allow the respondent address in good time as held in In **Gathoni versus Kenya Co-Operative Creameries Ltd. [1982] KLR 104,**

The law of limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.

Accordingly, objections by the respondents are allowed. Claims which arose in the years 2002 and 2004 respectively for each claimant are hereby found time barred. Time to file suit cannot be extended by negotiations. The suit is hereby struck out. Each party shall bear own costs.

Delivered at Nakuru this 17th day of December, 2019.

M. MBARU

JUDGE

In the presence of: