



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 356 OF 2016

(Before Hon. Justice Mathews N. Nduma)

JOHN MALECHE OPANGA.....CLAIMANT

VERSUS

KIBOS SUGAR AND ALLIED INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT

1. This suit was filed on 7th December 2016. The claim arises from termination of employment of the claimant by the respondent on 5th December 2013. The claimant prays for:

- i. Payment of service gratuity calculated at 20 days salary for each completed year of service.
- ii. Three months salary in lieu of notice and
- iii. Maximum compensation for unlawful termination of employment.

2. The claimant testified in support of the claim under oath. The respondent did not call any witness but filed submissions in which is raised a preliminary objection to *wit* that the suit is time barred by *dint* of *Section 90 of the Employment Act, Cap 226 Laws of Kenya* in that the suit was filed upon expiry of three (3) years from the date the cause of action arose.

3. The court is bound to consider this preliminary objection before delving into the merits of the case as it goes to the jurisdiction of the court to entertain the matter on the merits at all.

4. From the unchallenged pleadings by the claimant, the cause of action arose on 5th December 2013 and the suit was filed on 7th December 2016. A simple calculation reveals that the suit was filed three (3) years and two (2) days from the date the cause of action arose. The claimant did not file an application for extension of time prior to the filing of the suit and therefore no reasons have been advanced by the claimant for the late filing of the suit.

5. It is now trite following the Court of Appeal decision in *Devicon* case and a Myriad of Court of Appeal and E&LRC decisions that the court lacks jurisdiction to entertain a suit that has been filed upon expiry of three (3) years from the date the cause of action arose. The courts have also held that the court lacks authority to extend time of filing a suit based on contract of employment upon expiry of the three years period.

6. Accordingly, this court lacks jurisdiction to determine the merits of this suit. The suit is therefore struck off for want of jurisdiction with no order as to costs.

Judgment Dated, Signed and delivered this 9th day of December, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Nyanga for claimant

Mr. Olal for Respondent

Chrispo – Court Clerk