



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 158 OF 2015

BETWEEN

BERNARD ANTONY KIMWERE.....CLAIMANT

VERSUS

KENYA PORTS AUTHORITY.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Claimant in person

Mrs. Ikegu, Senior Legal Officer for the Respondent

RULING

1. The Respondent has filed Notice of Preliminary Objection, based on Section 66 of the KPA Act. The Notice was filed on 24th October 2019.
2. The Section places a limitation of 12 months on filing of Claims against the KPA. There is similar limitation placed by existing law in actions brought against other Government Corporations.
3. The letter of dismissal is dated 23rd March 2012. The Claim was filed on 23rd May 2015, some 3 years after the date of the dismissal letter.
4. The Claimant states he initiated the process of an internal appeal, but was not advised on the outcome by the Respondent.
5. The arguments made by the Parties on Section 66 of the KPA Act, have been made before, and Courts have made judicial pronouncements. The Court can cite the decisions supplied by Respondent through its list of 21st November 2019, as capturing these arguments.
6. This Court does not agree with the reasoning and decision of the Court of Appeal in the case of *KPA v. Cyrus Maina Njoroge*.
7. There is a lot of persuasion in the Submissions made by the Claimant today, on the effect of Section 66 on his Claim.
8. The Court, as stated in earlier decisions, cannot however, disregard decisions, made by the Court of Appeal. These decisions, made by a Superior Court, are binding on this Court.
9. The advice of this Court to the Claimant herein, is that he pursues his arguments at the Court of Appeal.
10. The Court defers to the decision of the *Court of Appeal in KPA v. Cyrus Maina Njoroge*, and makes the following Orders:-

a) The Claim is dismissed under Section 66 of the KPA Act.

b) No order on the costs.

c) Parties shall be supplied with a copy of the Ruling and Proceedings, to enable them pursue their arguments on appeal.

d) The file is closed.

Dated and delivered at Mombasa this 21st day of November 2019.

James Rika

Judge