



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 886 OF 2017**

**JULIUS GIKONYO MWANGI.....CLAIMANT**

**VS**

**NATIONAL WATER CONSERVATION**

**AND PIPELINE CORPORATION.....1<sup>ST</sup> RESPONDENT**

**COAST WATER SERVICES BOARD.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is triggered by a preliminary objection taken by the 1<sup>st</sup> Respondent by notice dated 3<sup>rd</sup> January 2018. The substance of the objection is that the Claimant's claim filed on 27<sup>th</sup> November 2017 is time barred by dint of Section 4(1) (a) and 4(3) of the Limitation of Actions Act, Cap 22, Laws of Kenya.
2. At the court appearance of 30<sup>th</sup> July 2019, the parties agreed to dispense with the preliminary objection by way of written submissions. However, only the 1<sup>st</sup> Respondent complied with these directions.
3. The 1<sup>st</sup> Respondent submits that the cause of action herein having arisen in the year 2004, the Claimant's claim filed on 29<sup>th</sup> November 2017 was way out of time.
4. By his Memorandum of Claim dated 27<sup>th</sup> November 2017 and filed in court on the same date, the Claimant seeks a declaration that his indefinite suspension without pay is unfair, unjustified and unlawful.
5. At paragraph 2 of the Memorandum of Claim, the Claimant pleads December 2004 as the effective date of the said indefinite suspension. This in my view is what constitutes the cause of action as defined by the Court of Appeal in *Attorney General & another v Andrew Maina Githinji & another [2016] eKLR*, being the act that caused the Claimant to complain.
6. The cause of action having arisen in 2004, the applicable limitation law is Section 4(1) of the Limitation of Actions Act. This provision provides that actions founded on contract cannot be brought after the lapse of six years from the accrual date.
7. The controlling authority on Section 4(1) of the Limitation of Actions Act is *Divecon Ltd v Samani (1995-1998) EA* where the Court of Appeal affirmed that the limitation period of six years set out in Section 4(1) of the Act is absolute and no court has power to extend it.
8. In this case, the time lapse between accrual of the cause of action and the filing of the Claimant's claim in court is thirteen years. The claim is clearly out of time and I have no jurisdiction to entertain it. For that reason, I strike it out with no order for costs.
9. It is so ordered.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 5<sup>TH</sup> DAY OF DECEMBER 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Shijenje for the Claimant

Mr. Wabuyabo for the 1<sup>st</sup> Respondent

No appearance for the 2<sup>nd</sup> Respondent