



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NUMBER 57 OF 2016

ROBERT NJERU NDATHO.....CLAIMANT

VERSUS

THE INSPECTOR GENERAL OF POLICE....1ST RESPONDENT

THE DIRECTOR CID.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. By a notice of preliminary objection dated 4th March, 2016 the respondent averred that the suit herein is time barred and offends the mandatory provisions of section 90 of the Employment Act. The suit therefore according to the respondents was an abuse of the court process.
2. It is common ground and as submitted by Mr Odukenya for the objector that the claimant was employed on into police service on or around February, 1981. On 4th October, 1999 the claimant was arrested and charged with the offence of extortion of money by threats contrary to section 300/1(A) of the Penal Code. The claimant was consequently interdicted on the same day he was arrested. At the conclusion of the criminal trial, the claimant was found guilty and fined Kshs 50,000/= in default to serve 2 ½ years term in prison. The claimant successfully appealed against his conviction to the High Court leading to the lifting of his suspension.
3. The police service later issued the claimant with a notice to show cause which he responded to but the response was found unsatisfactory necessitating his removal from service through a letter dated 6th February, 2008. The claimant appealed to the commissioner of police but the removal was upheld.
4. According to Mr Odukenye, having been dismissed from the service on 6th February, 2008 and the current suit filed on 21st January 2016, it was in record of 8 years after the accrual of cause of action. The suit was therefore statute barred as it offended section 90 of the Employment Act.
5. The claimant on his part submitted that the matter went to Kenya National Commission on Human Rights and the Commission on Administration of Justice (Ombudsman) as an attempt to resolve the dispute before filing the suit. Counsel for the claimant cited the cases of **Kenya Scientific Research International Technical and Allied workers Union (Per Wasilwa J)**, **Francis Muthiru Mu eVs Rakesh Anand t/a Rauneq Restaurant (Per Ndolo J)** where it was held that the limitation period in employment and labour matters does not begin until conciliation process is exhausted.
6. Counsel therefore submitted that the matte had been referred to the Office of the Ombudsman and the last communication was on 1st October, 2015 and the claim herein having been filed on 21st January, 2016 does not offend section 90 of the Act.
7. Section 90 bars any claim based on the Act or contract of employment generally from being filed after the expiry of 3 years from the date of accrual of the cause of action. In case of continuing injuries, within one year from cessation thereof. There seem to be no provision on whether the period once lapsed can be extended.
8. This court has ruled elsewhere that it does not have jurisdiction to extend time once it has lapsed. The claimant does not seem to dispute that his services were terminated on 6th February, 2008. All he is saying is that the matter was subsequently referred to Kenya National Commission on Human Rights and later the Ombudsman for resolution prior to the filing in court.

9. This is an erroneous understanding of the conciliation process provided for in the Labour Relations Act. The conciliation process in the Act is mandatory before a trade dispute can be filed before the court. Therefore once parties have been referred to conciliation by the minister and they go through the conciliation process they must wait for the outcome of conciliation process before taking the next step. The matter as it were is not in the control of the parties but the conciliator who must issue a conciliation certificate which will state whether the dispute has been resolved or not before the parties can decide to move to court or not.

10. An attempt to have a dispute resolved through independent commission or other bodies is not provided for in the Labour Relations Act hence cannot be invoked to suspend the running of limitation period.

11. The respondent's preliminary objection therefore succeeds with consequence that the suit herein is struck out for being statute barred.

12. It is so ordered.

Dated at Nairobi this 23rd day of February, 2018

Abuodha J. N.

Judge

Delivered this 23rd day of February, 2018

In the presence of:-

.....for the claimant

.....for the Respondent

Abuodha J. N.

Judge