



REPUBLIC OF KENYA
THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 378 OIF 2017

(Before Hon. Justice Hellen S. Wasilwa on 13th March, 2018)

ANGELINA M. KALOLA CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. The Application before Court is a Preliminary Objection filed by the Respondents herein dated 15th March 2017 on the grounds that this Court lacks jurisdiction to entertain this claim as it was filed out of time.
2. The Applicants have submitted that the cause of action arose on 17th May 2012 when the decision to terminate the Claimant Respondent was made. The Claimant filed this claim on 22.2.2017 4 years, 8 months and 22 days after the termination. The Respondents therefore submit that the claim is time barred and the Court has no jurisdiction to entertain it.
3. The Respondent Applicants cited **Re The Matter of the Interim Independent Electoral Commission (2011) eKLR** where a 7 Judge bench rendered itself as follows:-

“That jurisdiction flows from the law, and the recipient Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretations, or by way of endeavours to discern or interpret the intentions of Parliament, where the working of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution”.

4. The Applicants also refer to Section 90 of Employment Act, which state that cases under the Act should be filed within 3 years from the time the cause of action occurred.
5. The Respondent on their part opposed this Preliminary Objection. They filed submissions indicating that the Claimant was prematurely dismissed on 16/5/2012 while a criminal case over the said allegations were ongoing and she appealed against this dismissal.
6. The Respondent then wrote a recommendation for the Claimant’s reinstatement as a teacher on 23.4.2015 through the County Director for Kitui. The Respondent then went ahead to dismiss the

Claimant through the decision dated 23.4.2015.

7. The Claimant therefore avers that the claim was filed within the requisite period.

8. I have considered the averments of both parties. I note that indeed the Claimant was dismissed on 16/5/2012. She chose to appeal against this dismissal vide a letter dated 8/3/2015 which was also rejected and the appeal against the dismissal dismissed for being time barred. This means the date of dismissal stood at 16/5/2012 and this is when the cause of action arose.

9. The Claimant chose to file this case on 22.2.2017. For this claim to be properly before Court it should have been filed by 15/5/2015 as envisaged under Section 90 of Employment Act 2007 which states as follows:-

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof”.

10. This claim having been filed beyond the 3 years limitation period, it is improperly before Court and the Court cannot assume jurisdiction over it. This claim is therefore dismissed for want of prosecution in its entirety.

Dated and delivered in open Court this 13th day of March, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Museve holding brief for Mwalimu for Claimant – Present

Oyucho for Respondent – Present