



**REPUBLIC OF KENYA**

**THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 376 OF 2017**

**(Before Hon. Justice Hellen S. Wasilwa on 13<sup>th</sup> March, 2018)**

**GREGORY KYALO NZOKA .....CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION .....RESPONDENT**

**RULING**

1. The Application before Court is the Preliminary Objection raised by the Respondent Applicants herein that the Court lacks jurisdiction to entertain this claim for being time barred.
2. The Respondent Applicants have submitted that the cause of action arose on 17.5.2012 and this claim was filed on 7.2.2017 4 years, 8 months and 22 days after the decision to terminate the Claimant was made. The Respondents therefore submit that the claim is time barred and this 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 Claimant herein was dismissed in the same day as the Claimant in Cause No. 378/2017 and they filed their claims on the same day.
5. This Court has already determined that the Claimant in Case No. 378/2017 field her claim beyond the 3 years window period as provided 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 un less 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”.**

6. I adopt my arguments in the said ruling and also find that this claim is time barred and therefore it is improperly before my Court. This Court cannot assume jurisdiction over the same. The claim is therefore dismissed in its entirety for being time barred.

**Dated and delivered in open Court this 13<sup>th</sup> 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