



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1629 OF 2014**

*(Before Hon. Justice Mathews N. Nduma)*

**HUMPHREY ENOCK OMUKUTI.....CLAIMANT**

**VERSUS**

**KK GROUP SECURITY COMPANY.....RESPONDENT**

**R U L I N G**

1. Preliminary Objection was filed in terms of section 4(1) of the Limitation of Actions Act, Cap 22 Laws of Kenya in that the suit was filed out of time.
2. The Memorandum of Claim was filed on 16<sup>th</sup> September, 2014 commencing this suit.
3. From the face of the Memorandum of Claim, the Cause of Action arose on 26<sup>th</sup> May 2004, when the employment contract of the Claimant was transferred from EARS Group Limited to KK Group Security Company.
4. Clearly the suit was filed more than ten (10) years from the date the cause of action arose.
5. The Claimant did not seek enlargement of time but even if he had, enlargement of time is not permissible under section 27 of the Limitation of Actions Act, Cap 22 Laws of Kenya, See **Divecon v Samani [1995-1998] EA 48** per Court of Appeal.
6. This court lacks jurisdiction to entertain this suit following the supreme court decision in **Samuel Kanan Macharia & Another v Kenya commercial Bank Limited & 2 others S.C. application No. 2 of 2012** which stated –

*“A court’s jurisdiction flows from either the constitution or Legislation or both. Such a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of parliament where the wording of Legislation is clear and there is no ambiguity.”*

7. Accordingly, the Preliminary Objection is upheld and the suit dismissed for want of jurisdiction.

**Dated and Signed in Kisumu this 7th day of March, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 6th day of April, 2018**

**Maureen Onyango**

**Judge**

**Appearances**

Mr. Kamau for Respondent

Mr. Wangira for Claimant

Anne Njung'e – Court Clerk