

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1153 OF 2015

PERIS MAINA.....CLAIMANT

- VERSUS -

NAIROBI CITY WATER &

SEWARAGE COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 31st May, 2018)

RULING

The claimant filed the memorandum of claim on 03.07.2015 through Mucheru Oyatta & Associates. The claimant has pleaded as follows:

- a. She was employed by the respondent by the contract dated 16.09.2005 but effective 01.09.2015.
- b. On 23.01.2008 the respondent suspended the claimant from work on account of alleged fraud.
- c. On 02.07.2008 the claimant was summarily dismissed from work.
- d. The claimant appealed against the dismissal by her letter dated 02.02.2011. The respondent acknowledged the appeal by the letter dated 25.03.2011. By the letter dated 12.03.2011 the respondent summoned the claimant to appear before the appeals committee on 20.03.2013. By the letter dated 27.09.2013 the respondent disallowed the claimant's appeal.

The respondent filed the memorandum of response to the memorandum of claim on 24.08.2015 through Kangethe & Mola Advocates.

The respondent pleaded and raised a preliminary objection that the suit was time barred under the statutory provisions of the Employment Act, 2007. It is the respondent's case that the cause of action arose on 02.07.2008 when the claimant was dismissed. The claimant has urged that the cause of action was on 27.09.2013 when her administrative appeal was disallowed by the respondent.

It is not in dispute that the dismissal was on 02.07.2008 and upheld on 27.09.2013. The Court follows the holding in **Hilarion Mwabolo – Versus- Kenya Commercial Bank [2013]eKLR** (Ndolo J) that the cause of action under section 90 of the Employment Act, 2007 accrues from the date of termination as stated in the termination letter. In the present case the Court returns that the cause of action accrued on 02.07.2008 and the suit was filed on 03.07.2015 outside the three years of limitation prescribed under the section. As submitted for the respondent, the administrative appeal proceedings did not postpone or adjourn the running of the time of limitation after the dismissal on 02.07.2008.

In conclusion, the preliminary objection is hereby upheld and the claimant's memorandum of claim is hereby struck out with costs.

Signed, dated and delivered in court at **Nairobi** this **Thursday 31st May, 2018**.

BYRAM ONGAYA

JUDGE