



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1778 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 30th May, 2018)

KIRIINYA KITHINJI.....CLAIMANT

VERSUS

BARCLAYS BANK OF KENYARESPONDENT

RULING

1. The Claimant filed suit through the firm of Nyakundi & Company Advocates claiming damages for wrongful and unfair termination from employment and loss of benefits. He avers that from 18th November 1996 until 31st October 2010, he had been an employee of the Respondent earning a salary of 1,141,452.00 per annum well as various benefits.

2. He further avers that in April 2010, the Human Resources Department wrote a letter to him informing him that it was transferring its custody function to Standard Chartered Bank along with all the Barclays Bank of Kenya employees who were under the custody function at the time and he was among these employees. The Claimant states that he became an employee of Standard Chartered Bank once the transfer was complete.

3. The Claimant further states that the Respondent made it clear that it would terminate the contract of any of its employees who failed to transfer which pressured the Claimant to sign the contract transferring him to Standard Chartered Bank.

4. He avers that with the new contract he was no longer entitled to the same benefits as before and was also required to pay an extra Kshs. 1000 for medical cover. He was further subjected to strenuous and stressful working conditions like coming to work early in the morning and sometimes his work would be extended to well past midnight, which caused him to cut short his employment.

5. The Respondent confirms that the Claimant was their employee and was transferred to Standard Chartered Bank Limited. They however aver that the claim brought by the Claimant is time barred under Section 90 of the Employment Act, 2007 as the claim was filed 6 years after the alleged termination.

Submissions

6. The Claimant filed his submissions where he submits that the Respondent's actions of the transfer directly resulted to stressful working conditions, which subjected him to the termination of his employment contract. He avers that he did not sit on his rights by following up the issue with a view of having it solved amicably.

7. He contends that he even tried to reach out to the Respondent but his efforts were futile and later joined hands with other employees of the Respondents to seek redress and approached advocates to file claims on their behalf's but the rest pulled out before the proceedings formalized.

8. The Claimant avers that as a layman he was not aware of the timeline stipulated by the law and seek to be heard in the interest of justice as stated by the High Court in the case of **George Ngaruiya Kariuki Vs Inspector General Kenya Police Service Vs Attorney General [2016] eKLR** while quoting the views of **Madan, JA** in Case **Murai Vs Wainaina (No. 4) [1982]KLR** where he stated as follows:-

“A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made.....”

9. In their submissions, the Respondent submits that it is not in dispute that the claim was filed on 1st September 2016 which is 6 years after

the alleged date of termination of employment, this means that the claim was filed 3 years out time.

10. I have considered the evidence and submissions of both parties. The claim by the Respondent is for wrongful and unfair termination of employment and loss of benefits.

11. Under Section 90 of Employment Act:

“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”.

12. This claim brought under the Employment Act such a claim should be filed within 3 years from the date of the cause of action arose. The cause of action arose way back on 31/10/2010.

13. This case should have been filed by 30/10/2013. The Claimant filed this claim in September 2016 almost 3 years late. It is the finding of this Court that this claim is time barred and this Court has no jurisdiction to extend time. In the circumstances, and only on this issue, I find this claim cannot succeed. It would also not be in the necessary to determine any other issues. There is no order as to costs.

Dated and delivered in open Court this **30th day of May, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Nyangito holding brief for Mr. Nyakundi for Claimant – Present

No appearance for Respondent