



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1875 OF 2015

JOHN KURIA NGECHU.....CLAIMANT

v

BATA SHOE COMPANY LTD.....RESPONDENT

RULING

1. John Kuria Ngechu (Claimant) instituted legal proceedings against Bata Shoe Co. Ltd on 21 October 2015 alleging breach of contract and unfair termination of employment.
2. According to the Claimant's written statement and paragraphs 4 and 7 of the Memorandum of Claim, the breaches of contract and termination occurred around 31 April 2011.
3. The Claimant also pleaded that the Respondent caused him to be charged before the Magistrate's Court with the offence of stealing by servant and that he was acquitted on 31 March 2015.
4. On 27 February 2018 the Respondent indicated that it wanted to file a preliminary objection, and the Court directed it to file and serve the objection on or before 7 March 2018.
5. The Respondent filed the objection on 7 March 2018 in the following terms
 - 1.The Claimant's claim is time barred by virtue of section 90 of the Employment Act No. 11 of 2007 and ought to be struck out with costs.
6. When the objection was called out for hearing on 13 March 2018, the Court dismissed it because the Respondent had failed to serve it.
7. On 16 March 2018, the Respondent filed another similarly worded objection.
8. When the objection came up for hearing on 12 April 2018, there was on record an affidavit of service filed in Court on 11 April 2018, deposing that the Claimant's advocate on record acknowledged service of hearing notice.
9. The Claimant however did not attend Court and being satisfied with the service, the Court allowed the hearing of the objection to proceed.
10. Pursuant to section 90 of the Employment Act, 2007, the Claimant had 3 years within which to commence legal action for unfair termination of employment and/or breach of contract.

11. He commenced action outside the prescribed period, and therefore the Court agrees with the Respondent that the Cause herein is time barred.

12. In terms of case law, the pendency of the criminal case and subsequent acquittal could not stop time from running or revive the cause of action (see *Attorney General & Ar. v Andrew Maina Githinji & Ar* (2016) eKLR.

13. The Court upholds the objection and strikes out the Memorandum of Claim without any order on costs.

Delivered, dated and signed in open Court in Nairobi on this 4th day of May 2018.

Radido Stephen

Judge

Appearances

For Claimant Mwaura Shairi & Co. Advocates

For Respondent Mr. Weru instructed by Obura Mbeche & Co. Advocates

Court Assistant Lindsey