



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1032 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 26th June, 2018)

SAMMY NGATACLAIMANT

VERSUS

AFRICAN MEDICALAND RESEARCH FOUNDATION.....RESPONDENT

RULING

1. The Respondent raised a Preliminary Objection in the matter stating that this claim is time barred by virtue of Section 90 of the Employment and Labour Relations Act of 2007 as the Claimant's contract of employment was terminated on 31st March 2010 and the Claimant filed this case on 9th July 2013 which is over 3 years later.
2. In their submissions, the Respondents submit that in the Claimant's Memorandum of Claim he pleaded that his employment ended in January 2010 when he was dismissed without notice and pay. In his witness statement filed on 31st August 2016, he reiterates that he worked for 5 years from February 2005 to January 2010 and that in his further witness statement filed on 13th September 2016, he states that the last contract was to run for six months to the 30th of March 2010.
3. The Claimant filed his submissions where he submits that the total period worked is 5 years, which is not denied by the Respondent. He avers that the contract was terminated by a call from the Respondent stating that he should not report to work "until called back". This was in January 2010 before the expiry of the last written contract on 31st March 2010 which fact is not denied by the Respondent.
4. He avers that his employment was governed by the provisions of Section 37 and 35 of the Employment Act which the Respondents' conduct was in breach of. Effective date of termination is one stated in a letter of termination but in the present case the termination was by phone calls stating "till further notice" hence effective termination date cannot be assumed to be the 31st March 2010 as contained in the last written contract which was illegal in view of the provision of Section 35 and 37 of the Act.
5. He further avers that in the above circumstances this Honourable Court should infer that the Claimant is still waiting for the Human Resource Mr. Sitati to call and tell him when to report back to work as there is no "definite termination" of the employment and so this claim is not time barred.
6. I have examined the averments of both parties. Section 90 of Employment Act 2007 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 unless 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".
7. By virtue of this law, a contract for termination of services should be filed within 3 years from the time the cause of action arose.
8. The Claimant has stated categorically in his pleadings and statement that his contract was terminated in January 2010 without notice. He cannot turn back at this point in time and state that he is still waiting to be called and told when to report back to work.
9. In my view, the contract terminated in January 2010. In this case then, the Claimant should have filed his claim by January 2013.

10. The claim was however filed on 9/7/2013, which was almost 9 months later from the time expected.

11. I do agree with the Respondents that indeed this claim is filed outside time and cannot be sustained by Court. I therefore find the claim time barred and I dismiss it accordingly with no order as to costs.

Dated and delivered in open Court this 26th day of June, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Onyango holding brief for Wetende for Respondent – Present

No appearance for Claimant