



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

ELRC CAUSE NO. 279 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 21st June, 2018)

JOAB ISAAC OUMA.....LAIMANT

VERSUS

NATIONAL SOCIAL SECURITY FUND.....RESPONDENT

RULING

1. The Application before Court is the Preliminary Objection raised by the Respondents herein on the grounds that this claim is time barred.
2. The Respondents submitted that the Claimant was terminated on 9/8/2007 as at page 3 of his documents paragraph 2. The suit was however instituted on 22/12/2012 which was 5 years after the dismissal which is contrary to Section 90 of Employment Act.
3. The Respondents also aver that since the course of action arose on 9.8.2007, the Repealed Employment Act Cap 226 applies and since the Claimant did not report this case to the Minister for Labour, the case cannot succeed.
4. The Respondent/Claimant opposed this Preliminary Objection. They stated that there were negotiations before the Labour office until 2010 and so the time was not running then. They want the Preliminary Objection to be dismissed.
5. I have considered the averments of both parties. I note that indeed the Claimant as per his Memorandum of Claim, he was dismissed on 9.8.2017. This was during the dispensation of the repealed Employment Act Cap 227. Under the Trade Disputes Act Section 14(9) (f) provides that:-

“The Court shall not take cognizance of any trade dispute or deal with any matter connected therewith where the trade dispute solely concerns the dismissal or reinstatement of any employee, unless the Court has received, in addition to the certificate required by paragraph (e) the written authority of the Minister for that purpose”.

6. In the Claimant's case, there is no indication that this claim passed through the conciliation process and if it did, there is no certificate to that effect by the Minister. This claim is therefore improperly before Court.
7. Secondly, the cause of action having occurred in 2007, under the repealed law, the limitation period will be 6 years, which is 8/8//2013 as provided for under Cap 22.
8. However, the Claimant's pleadings seek prayers brought under the current Employment Act. In any case, since in this claim there was not attempt to reconcile the matter, the claim is improperly before Court and I therefore find the Preliminary Objection has merit. I therefore uphold the Preliminary Objection and dismiss this claim accordingly.
9. There will be no order as to costs.

Dated and delivered in open Court this 21st day of June, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties