



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 1884 OF 2015

JOHN MUREITHI KIAGAYU.....CLAIMANT

v

ATTORNEY GENERAL.....RESPONDENT

RULING

1. On 13 August 2011, John Mureithi Kiagayu (Claimant) moved the High Court through Petition No. 141 of 2011 alleging infringement of his rights for alleged membership of Mwakenya.
2. Among the reliefs that the Claimant sought in the Petition were
 - (a) general damages for compensation for torture and unlawful imprisonment by the government agents.
 - (b)
 - (c) the termination from employment was unlawful and should be reinstated and his salary paid in full and or be reinstated to his employment.
 - (d)
3. In a judgment delivered on 18 December 2013, the High Court declined jurisdiction over the employment dispute and directed the Claimant to approach the correct Court.
4. The Claimant therefore filed a Memorandum of Claim in this Court on 22 October 2015, and he stated the Issue in Dispute as *wrongful and unlawful summary dismissal of the Claimant's services and failure by the Respondent to pay terminal benefits to the Claimant*.
5. The Claimant sought compensation for unfair termination of employment, income he would have earned up to retirement computed as Kshs 9,912,780/- and unpaid leave allowances.
6. Upon service, the Respondent filed a *Notice of Preliminary Objection* on 20 July 2016 on the ground that the Cause offended the provisions of section 90 of the Employment Act, 2007 as well as the Limitation of Actions Act.
7. On or around 12 April 2017, the Respondent filed an application to have the Cause dismissed for want of prosecution.
8. When the Cause came up for hearing on 7 March 2018, the Court dismissed it because the Claimant was not present.
9. On 16 March 2018, the Claimant filed an application seeking orders
 - 1). ...
 - 2) That this Honourable court be pleased to set aside the orders made on the 7th day of March 2018 dismissing the Plaintiff's suit for want of prosecution.
 - 3) That this Honourable court be pleased to set aside the suit for hearing and determination inter-parties on merit.
 - 4). ...

10. On 9 April 2018, the Court vacated the dismissal order on account that the Respondent had not served the Claimant with the application of 12 April 2017.
11. Upon the vacating the dismissal order, the Court directed that the preliminary objection on limitation be urged and arguments were taken on 3 May 2018.
12. The Claimant filed a replying affidavit in opposition to the preliminary objection on 12 April 2018.
13. The Court has considered the objection, the replying affidavit, the authorities and oral submissions.
14. In paragraph 10(b) of the Memorandum of Claim, the Claimant set out the date of unlawful termination of employment as 10 July 1987.
15. The applicable law on limitation at the time on contractual disputes was section 4(1) of the Limitation of Actions Act. Specifically, the limitation was prescribed at 6 years.
16. In terms of that provision, the Claimant ought to have commenced legal action on or before 9 July 1993. The cause of action on the employment contract is therefore caught up by the law of limitation.
17. As already indicated, the Claimant had instituted action in 2011 by way of a Petition wherein he included different causes of action.
18. The High Court declined jurisdiction over the employment dispute and opined that he should approach the proper Court.
19. In the view of this Court, the direction by the High Court that the Claimant move the proper Court did not and cannot oust the express statutory provisions on limitation which applied at the material time.
20. Limitation is not purely a technical question as suggested by the Claimant which can be salvaged by reference to Article 159 of the Constitution. It goes to jurisdiction.
21. Before concluding, the Court wishes to note that unfair termination of employment as a cause of action and the attendant remedy of compensation were introduced into our jurisdiction by the Employment Act, 2007 and therefore it is doubtful whether the Claimant could avail himself of the head of claim and relief.
22. The Court therefore upholds the preliminary objection and dismisses the Cause herein with no order as to costs.

Delivered, dated and signed in Nairobi on this 18th day of June 2018.

Radido Stephen

Judge

Appearances

For Claimant	Mr. Osoro instructed by Osoro Juma & Co. Advocates
For Respondent	Ms. Shitubi, State Counsel, Office of the Attorney General
Court Assistant	Lindsey