



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.89 OF 2018

TABITHA K RUTERE.....CLAIMANT

VERSUS

KENYATTA UNIVERSITY.....RESPONDENT

RULING

The claimant filed her Memorandum of Claim in person on 4th April, 2018. Together with the claim, the claimant filed an application under Certificate of Urgency and seeking for urgent orders.

Upon the court perusal of the Notice of Motion seeking for a reinstatement and the elimination of discrimination and the withheld salaries, allowances and benefits is paid. The claimant was directed to serve the respondent for directions.

Both parties attended on 10th April, 2018. Upon herein the claimant, the basis of the claims revolving around her termination of employment in 2011, the parties was directed to negotiate and where there was agreement report to court on 14th May, 2018.

On the due date, the parties had not agreed on any issue and the respondent filed a Notice of Objections on the grounds and application of section 90 of the Employment Act, 2007 and that the suit is statute barred by operation of the law.

Both parties made their arguments and the claimant, acting in person agreed termination of employment was in 2011 outside the period stated under section 90 of the Employment Act, 2007 and requested the court to give a detailed ruling with regard to what jurisdiction entailed and the basis of the objections.

The request by the claimant is genuine and legitimate noting her anxiety to raise employment and labour relations matters on her employment with the respondent and her circumstances as set out in her Memorandum of Claim. The claimant was employed by the respondent on 22nd April, 1991, she was promoted over time but around 8th September, 2011 she was unable to proceed with her employment for being unwell and the need to consult with a psychiatrist consultant to seek help. The claimant was diagnosed with acute depression and that she was unfit to perform her duties and instructed the claimant not to go back to her place of work. On 3rd number, 2011 the claimant as admitted in hospital and remained in and out of hospital under treatment. On 21st November, 2011 the claimant wrote a letter of resignation citing mistreatment by the respondent.

On 24th November, 2011 the respondent's Psychiatrist placed an internal memo recommending that the letter of resignation be ignored but there was no action taken. The claimant's mental health further deteriorated and was in and out of hospital.

On 1st December, 2011 the claimant's employment was terminated on the grounds that she had resigned and could not resume duty. Efforts to address this on the grounds that the claimant was suffering mental health and there was a recommendation that the letter of resignation be ignored were not addressed by the respondent.

On 31st March, 2017 the claimant was employed by the respondent on a fixed term contract and posted to Nakuru Campus. Upon the lapse of the contract, the respondent did not issue a new contract.

The claims are for reinstatement, payment of deducted dues, allowances and benefits.

The respondent thus submitted that the claims made are statute barred and the court has no jurisdiction under section 90 of the Employment Act, 2007 to hear the matter or make an award with regard to the orders sought by the claimant. A cause of action filed after three (3) years since the cause of action arose cannot be entertained by the court and the court cannot extend time to enable the claimant litigate on her claims after time.

What is Jurisdiction of the court?

Does the claimant have a cause of action herein?

Section 90 of the Employment Act, 2007 provides as follows;

90. Limitations

Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), 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.

No civil action arising but of rights set out under the Employment Act, 2007 or based on a contract of service or employment shall be made unless it is commenced three (3) years after the act complained of arose. Effectively, the date of termination of the employment relationship is fundamental. Based on such a date, a complaint must be lodged with the court within 3 years. After 3 years, the court has no jurisdiction or power to extend the set statutory time.

Jurisdiction? is said to be everything. Without it, a court must stop and deal as to precede without jurisdiction? it would be an action in futility.

The *locus classicus* on jurisdiction is the celebrated case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** where Nyarangi, J of the Court of Appeal held as follows;

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

In espousing on „jurisdiction? the court in the case of **Seven Seas Technologies Limited versus Eric Chege [2014] eKLR** made reference to the works of **Words and Phrases Legally defined – Volume 3: I – N** as follows;

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

Jurisdiction therefore is the power given to a court to carry out its functions and or mandate. This may be conferred by statute or the constitution or both.

Halsbury's Laws of England (4th Ed.) Vol. 9 at page 350 thus defines “jurisdiction” as “...the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for decision.” The court must have authority conferred by statute or the constitution to decide or preside over matters litigated before it. Without authority to preside, the court must stop.

John Bee croft Saunders in his treatise **Words and Phrases Legally Defined Vol.**

3, at page 113 on definition of the term „jurisdiction? as follows:

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognisance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”.

For this court **Article 162(2)** and (3) of the constitution, 2010 provides that Parliament shall establish court of similar status as the High Court to preside over matters;

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

And under Clause (3) thereof authorizes Parliament to “determine the jurisdiction and functions of the Courts contemplated in clause (2).”

In this regards, Parliament has passed the Employment and Labour Relations Court Act, 2011 and section 12 sets out the court's jurisdiction to hear claims based on employment and labour relations. Parliament has also passed the Employment Act, 2007 setting out rights in employment and under which all claims must be filed with the court in accordance with section 90 thereof.

Where the claimant was therefore employed by the respondent in 1991 and employment termination was confirmed vide letter dated 1st December, 2011 any claims with regard to her employment should have been filed in accordance with section 90 of the Employment Act, 2007 which under section 49 allow for the remedy of reinstatement, payment of terminal dues and other employment benefits.

Also, where the claimant was unable to file her claims because of ill-health or other circumstances within 3 years, the court has no authority, power or discretion to extend time to enable the claimant file such claims out of time. See the Court of

Appeal in **Beatrice Kahai Adagala versus Postal Corporation of Kenya [2015] eKLR** held as follows;

*Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the Employment Act 2007 which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years. As this Court stated in the case of **Divecon Limited -vs- Samani [1995-1998] 1 EA P.48, ... in Josephat Ndirangu - vs – Henkel Chemicals (EA) Limited, [2013] eKLR**, the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of Sections 27 and 28 of the Limitation of Actions Act.*

As there is no claim premised on the contract issued to the claimant over a fixed term period starting 31st March, 2017 this court has to stop at this point with regard to claims emanating from employment terminated as at 1st December, 2011. There is no authority on the court to hear and determine a claim barred by statute.

The suit herein is time barred and is hereby dismissed. Each party shall bear own costs.

Delivered in open court at Nakuru this 7th June, 2018.

M. MBARU

JUDGE

In the presence of.....

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