

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE. NO. 2150 OF 2016

KELVIN WANJALA MACMATARA.....CLAIMANT

VERSUS

CO-OPERATIVE BANK OF KENYA LIMITED.....RESPONDENT

RULING

Introduction

1. The Claimant brought this suit on 18.10.2015 alleging that he was unfairly dismissed by the respondent on 12.9.2013. He sought to recover one month salary in lieu of notice and salary compensation for unfair termination.

2. In response the respondent raised Preliminary Objection to the suit on ground that the same was statute barred by dint of section 90 of the Employment Act. The Preliminary Order was disposed of by written submissions which I have carefully considered alongside the pleadings filed. The issue for determination herein is whether the suit is statute barred.

Section barred suit

3. Section 90 of the Employment Act provides that:

“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 the case of continuing injury or damage within twelve months next after the cessation thereof.”

4. There is no dispute that the suit before the Court is based on a contract of service under the Employment Act. There is further no dispute that the cause of action arose on 12.9.2013 when the contract of service was terminated by the letter dated even date or 16.10.2013, when he received the said letter. Under paragraph 4 of the statement of claim, the claimant pleaded, thus:

“4. On or about 16th October 2013, the claimant received a letter dated 12.9.2013 from the respondent informing him that it had terminated his services on account of alleged fraudulent activities purported to have been made by the claimant.”

The said pleading are clear that the termination was done on 12.9.2013 and communicated on 16.10.2013. The latest time for filing suit in respect of the said cause of action was therefore 16.10.2016 when the window of three years under section 90 of the Act closed. Consequently, the suit being filed on 18.10.2016 is statute barred by dint of section 90 of the Act.

Conclusion and Disposition

6. This being an obvious case of a suit filed outside the limitation period set out by an express statute, I strike it out with no order as to costs.

Dated, Signed and Delivered in Open Court at Nairobi this 31st day of July, 2018

ONESMUS N. MAKAU

JUDGE