



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 641 OF 2017**

**JACKLINE AWUOR OCHIENG.....CLAIMANT**

**- VERSUS -**

**THE AGA KHAN UNIVERSITY HOSPITAL.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday 12<sup>th</sup> July, 2018)

**RULING**

The claimant filed the statement of claim on 04.04.2017 through Muga & Muga Advocates. The claimant prayed for judgment against the respondent for Kshs. 490, 000.00 on the headings of leave, overtime, service pay and compensation for unfair termination.

The statement of response was filed on 07.07.2017 through CFL Advocates. The respondent prayed that the suit should be dismissed with costs.

On 05.12.2017 the respondent filed a preliminary objection that the suit be struck out *in limine* on grounds that the suit is time barred under section 90 of the Employment Act, 2007.

The claimant did not file submissions or other papers to oppose the preliminary objection. It is submitted that at paragraph 9 of the statement of claim the claimant stated that she was terminated on 04.04.2014. The respondent has admitted that the termination was on 04.04.2014. The claimant's appeal against the termination was decided on 27.05.2014. The respondent relies on **Hilarion Mwabolo –Versus- Kenya Commercial Bank [2013]eKLR** (Ndolo J) that the effective date of the cause of action is the date of termination per termination letter. The respondent further relies on **Benjamin Wachira Ndiithi –Versus- Public Service Commission & Another [2014]eKLR**, where it was held that an administrative review or an appeal does not mean that the accrual of the action is held in abeyance until a final verdict on the review or appeal.

Further, the respondent relies on **John Musumba Mutisya –Versus- Mash Bus Services Limited [2018] eKLR**, (Rika J) for the holding that a year is not defined in the Employment Act, 2007 but under section 3 of the Interpretation and General Provisions Act, Cap. 2, a year is reckoned by the British Calendar being 365 – day Calendar in use in Kenya.

The Court follows the authorities cited but also considers section 57 (a) of the Interpretation and General Provisions Act which provides that in computing time for the purposes of a written law, unless the contrary intention appears a period of days from the happening of an event or the doing of an act, or thing, shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

In this case the termination was on 04.04.2014 and suit was filed on 04.04.2017. Section 3 of the Act simply provides that a year is to be reckoned as a year per British calendar and the days in a year under such calendar is not stated. A typical year would be 365 or about 366 days. Taking into account section 57(a) of the Act, the Court returns that the suit in the present circumstances, in absence of any other thing, would not be outside the 3 years of limitation period under section 90 of the Employment Act, 2007.

In conclusion the preliminary objection filed on 27.11.2017 is hereby dismissed with costs in the cause.

Signed, dated and delivered in court at Nairobi this Thursday 12<sup>th</sup> July, 2018.

**BYRAM ONGAYA**

**JUDGE**