



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 321 OF 2014**

**(Before Hon. Justice Hellen S. Wasilwa on 9<sup>th</sup> July, 2018)**

**JACKSON K. MATHENGE.....CLAIMANT**

**VERSUS**

**KENYA BROADCASTING CORPORATION.....RESPONDENT**

**RULING**

1. The Application before Court is the Preliminary Objection dated 1/2/2017. The Respondent/Applicant moved this Court by way of a Preliminary Objection dated 1/12/2017 on the grounds that the Claimant has not complied with the mandatory provisions of the law namely Section 46 of the Kenya Broadcasting Corporation Act (KCB Act) and so the claim should be dismissed in limine.
2. The Claimant/Respondent did not file any response to the Preliminary Objection despite being given 14 days to file a response on 8/3/2018.
3. The Parties were also asked to file submissions on this Application and only the Respondent filed his submissions.
4. The Plaintiff/Claimant first moved Court vide a Plaint dated 29<sup>th</sup> May 1998 and filed in Court on 3<sup>rd</sup> June 1998 at Kiambu Law Courts seeking orders for general damages for wrongful dismissal, plus costs and interest.
5. The Defendant filed their defence on 22/6/1998 admitting that the Claimant was in Defendant's employment from 1990 till 1994 when he was retired in the public interest because of unsatisfactory performance of his duties. They aver that the Claimant was paid all his final dues.
6. At paragraph 8 of the Defendant's Statement of Defence, they point out that the suit is incompetent for non-compliance with Section 46 of the KBC Act Cap 221 Laws of Kenya and that the Preliminary Objection shall be raised by the Defendant at the hearing therefore.
7. The Defendant have submitted that the Claimant was retired in public interest on 29<sup>th</sup> March 1994 and he filed the case on 3.5.1998 which was 5 years 1 month after the cause of action arose and this is contrary to Section 46(b) of KBC Act which states that any action under the Act should be brought within 12 months from the time the cause of action arose.
8. Section 46 of the KBC Act Cap 221 states as follows:-

***“Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect:-***

***a) The action or legal proceeding shall not be commenced against the Corporation until at least one month after written notice containing the particulars of the claim and of the intention to commence the action or legal proceedings, has been served upon the Managing Director by the Plaintiff or his agent;***

***b) The action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof”.***

9. The provisions of Section 46 above is very explicit and couched in mandatory terms. There is no indication that the Plaintiff served the

requisite notice upon the Respondent as required by law. The claim was also filed after the 12 months period as provided herein.

**10.** I do find that the Preliminary Objection raised has merit. This claim having been filed outside the required period is incompetent by virtue of limitation. I therefore dismiss this claim in its entirety with no order as to costs.

**Dated and delivered in open Court this 9<sup>th</sup> day of July, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties