



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO 281 OF 2016

JOSEPH CHARLES MBOKO.....CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. The respondent herein raised a preliminary objection to the claim herein to the effect that the claim has been filed outside limitation period provided for under Section 90 of the Employment Act.
2. In support of this contention counsel for the respondent relied on the Court of Appeal's decision in **Divecon Vs Samani [1995-1998] 1EA 48** where that court held that extension of time to file suit out of time is not available for suits founded on contract. It was therefore unacceptable for the superior court Judge to imply that the wording of section 4(1) of the Limitation of Actions Act suggested a discretion that can be invoked.
3. Counsel further relied on section 90 of the employment Act which bars the filing of any action based on the Act or contract of employment generally after expiry of three years from the date of accrual of the cause of action.
4. This court has severally upheld that the wording of section 90 does not appear to give it the discretion to extend the period for filing suit once time prescribed by the Act has expired.
5. Counsel for the claimant did not address herself to this important question of law. Counsel instead spent time attacking the merits of the reasons for her client's dismissal and only said of the objection that the same was being brought to defeat the cause of justice. The claimant was dismissed from service on 24th March, 2010.
6. He appealed against the dismissal and the decision refusing his appeal communicated to him by a letter dated 8th July, 2010. Arithmetically therefore the claim herein ought to have been filed on or before 8th July, 2013. The claim was however filed on 25th February, 2016 which is way outside the three year period prescribed by the Employment Act.
7. In conclusion the court upholds the preliminary objection and hereby strikes out the claim as incompetent with costs to the respondent.
8. It is ordered.

Dated at Nairobi this 6th day of July, 2018

ABUODHA J. N.

JUDGE

Delivered at Nairobi this 6th day of July, 2018

ABUODHA J. N.

JUDGE

In the presence of:-

.....for the Claimant

.....for the Respondent