

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1162 OF 2013

WILSON MUNYWOKI.....CLAIMANT

VERSUS

KENYA NATIONAL TRADING CORPORATION LIMITED.... RESPONDENT

RULING

Introduction

1. The claimant brought this suit on 23.7.2013 claiming General as well Special damages for bodily injuries he suffered while in the cause of his employment by the respondent on 4.1.2009. The respondent filed defence denying liability and objected to the suit on the ground that it is statute barred by dint of section 90 of the Employment Act. On 19.4.2018, counsel for both parties agreed to dispose of the Preliminary Objection (P.O) by written submissions. The respondent filed hers on 24.4.2018 but the claimant never filed any submissions. Consequently, it is my view that the P.O. is unopposed.

2.However out of abundance of caution I have decided to verify whether the suit is statute barred vis a vis section 90 of the Act. There is no dispute that under section 90 of the Act, any suit founded on the provisions of the said Act or on a contract of employment generally must be commenced within 3 years immediately after the time when the cause of action arose or for continuing breach or injury, within 12 months from the time when the continuing breach or injury ceased.

3. There is no dispute that this suit is brought under section 8, 28, 35, 36, 40, 49, 50 and 87 of the Act as pleaded under paragraph 13 of both the original statement of claim and the Amended Claim filed on 19.5.2015. Going by the provisions of section 90 of the Act, the suit herein ought to have been commenced latest on 4.1.2012 when the limitation period lapsed. Consequently filing the same on 23.7.2013 was obviously out of the said limitation period and that rendered the suit statute barred and it stands dismissed with no costs.

Dated, Signed and Delivered in Open Court at Nairobi this 17th day of August, 2018

ONESMUS N. MAKAU

JUDGE