

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE 1354 OF 2014

ERNEST KIBANDE ALUGAYA.....CLAIMANT

VERSUS

PEARL DEVELOPERS LIMITED.....RESPONDENT

RULING

1. The respondent raised an objection in limine that the claimant's suit was statute barred by virtue of Section 90 of the employment Act 2007 hence the court lacked jurisdiction to hear the same.
2. The claimant herein pleaded that around February, 2008 the respondent employed him as a casual labourer at a daily wage of kshs 300/=. He worked until 2009 September when the respondent terminated his services without assigning any reason and without notice.
3. The claim was filed on 18th August, 2014 some five years after the alleged wrongful dismissal. Section 90 of the Employment Act provides that no action based on the Act or contract of employment generally shall be brought after expiry of three years from the date of the accrual of the cause of action or in case of continuing injury within twelve months after cessation thereof.
4. The wording of the section is couched in mandatory terms and does not seem to give room for extension of time once it has lapsed. Further, the law on limitation of actions founded on tort. The limitation period for actions founded on other causes of action seem fixed with no room for extension.
5. In the circumstances, the preliminary objection is hereby upheld with consequence that the court lacks jurisdiction to entertain the current suit. The suit is therefore struck out with costs.
6. It is so ordered.

Dated at Nairobi this 21st day of September, 2018

Abuodha J. N.

Judge

Delivered at Nairobi this 21st day of September, 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent.