



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 429 OF 2013**

*(Before Hon. Justice Mathews N. Nduma)*

**AYALEW TESHOME LEMMA.....CLAIMANT**

**=VERSUS=**

**WORLD VISION INTERNATIONAL.....RESPONDENT**

**J U D G M E N T**

1. The suit commenced by a Memorandum of Claim dated 28<sup>th</sup> March, 2013 and filed on the even date.
2. From the Particulars of Claim set out under paragraph 7 thereof, the Claimant seeks payment of various benefits to wit; Dependant Education Benefits; Housing and utilities and transport allowance not paid to the Claimant being an International Employee based in Kenya between 31<sup>st</sup> August, 2004 and the year 2007 when the Claimant ceased to work for the Respondent.
3. In the Reply to the Statement of Claim and in particular under paragraphs 4 and 6 thereof, objection is raised to the effect that the reliefs sought by the Claimant are time barred by dint of section 90 of the Employment Act No. 11 of 2007.
4. That the issue of limitation ought to have been canvassed at the outset in terms of **SSS Lilian Vessel Case** and **Mukisa Biscuits Case** being a pure point of law determinable without dwelling into any facts in dispute.
5. Arguments on limitation were however not canvassed and the case went to full trial.
6. The Claimant testified under oath as CW 1 and was closely cross examined by Mr. Njoroge for the Respondent.
7. The Respondent called RW 1 Gladys Njeri, Nairobi Office Co-ordinator and Senior Financial Accountant of the Respondent (RW 1).
8. From the testimony of both parties it is not in dispute that the Claimant was an employee of the Respondent based in Nairobi between the year 2000 and 2004, and managed South Sudan.
9. It is also not in dispute that the reliefs sought are said to have accrued during the tenancy of the employment contract, between March 2000 and 31<sup>st</sup> August, 2004.
10. The suit was filed on 28<sup>th</sup> March, 2013 more than nine years after the cause of action arose.
11. At the time the cause of action arose, no claim arising from contract could be filed in court more than six (6) years from the date the cause of action arose in terms of section 4 (1) of Limitation of Actions Act Cap 22 Laws of Kenya.
12. The Claimant in this matter did not file application to seek extension of time before filing the suit.
13. In terms of section 4 of the Limitation of Actions Act Cap 22 of Laws of Kenya and as was well stated by the Court of **Appeal in Divecon Limited v Samani [1995-1998]EA48,**

***“The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the***

*action.....A perusal of Part III shows that its provisions do not apply to actions based on contract. In the light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that ‘the wording of section 4(1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked.’*

14. Accordingly, this court lacks powers to entertain or make a determination of this suit, although the same was heard and testimony received from the parties, which conclusively shows that the reliefs sought are time barred by dint of section 4(1) of Limitation of Actions Act, Cap 22 Laws of Kenya.

15. The court makes no order as to costs especially because the Respondent ought to have pursued this point before the hearing of the main suit commenced.

16. The entire suit is struck out for want of jurisdiction.

**Judgment Dated, Signed and delivered this 12<sup>th</sup> day of October, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 26<sup>th</sup> day of October, 2018**

**Maureen Onyango**

**Judge**

**Appearances:-**

Hayanga & Company Advocates for Claimant

M/s. Igeria Ngugi Advocates for Respondent

Daniel Ngumbi : Court Clerk