



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 2381 OF 2017**

**EVERLINE NYAKERARIO.....CLAIMANT**

**VERSUS**

**PROFESSIONAL CLEAN CARE LIMITED.....RESPONDENT**

**CONSOLIDATED WITH ELRC 2382 OF 2017**

**FLORENCE NDOTI KAMUYA.....CLAIMANT**

**VERSUS**

**PROFESSIONAL CLEAN CARE LIMITED.....RESPONDENT**

**ELRC 2380 OF 2017**

**PATRICIA MULEI RICHARD.....CLAIMANT**

**VERSUS**

**PROFESSIONAL CLEAN CARE LIMITED.....RESPONDENT**

**ELRC NO. 2379 OF 2017**

**SOPHIE MUKULU MUTHIANI.....CLAIMANT**

**VERSUS**

**PROFESSIONAL CLEAN CARE LIMITED.....RESPONDENT**

**ELRC 2378 OF 2017**

**ELIZABETH WAMBURA NJIRU.....CLAIMANT**

**VERSUS**

**PROFESSIONAL CLEAN CARE LIMITED.....RESPONDENT**

**ELRC 2377 OF 2017**

**HELLEN MAKUJO.....CLAIMANT**

**VERSUS**

**PROFESSIONAL CLEAN CARE LIMITED.....RESPONDENT**

## RULING

### **INTRODUCTION**

1. The Claimants brought separate suits on 1.12.2017 seeking terminal dues plus compensation for unfair termination of their contract of service by the respondent on 30.11.2014. The respondent filed defence in all the separate matters denying liability and further pleaded that the suit was Statute barred. On 30.5.2018, the suits were consolidated by consent of the parties.

On 4.6.2018, the respondent filed a Notice of Preliminary Objection (P.O) to the suit which is now before me for determination. The Preliminary Objection is praying for striking out of the suit on the following grounds:-

- (a) The suit is Statute barred by dint of section 90 of the Employment Act.
- (b) The suit as drawn and filed is incompetent, fatally defective and unsustainable in law or at all.

The Preliminary Objection was opposed by the Claimants and it was ` disposed of by written submissions.

### **Respondent's submissions**

2. The respondent submitted that the cause of action arose on 30.11.2014 and lapsed after 3 years, that is before the suits were filed on 1.12.2017. She relied on Section 90 of the Act and several precedents including

### **Attorney General & Another –vs- Andrew Maina Githinji & Another**

### **Claimants' Case**

3. The Claimants admitted that their services were terminated effective 30.11.2014 and they filed their suits on 1.12.2017. They however denied that their suits were filed out of time. They relied on Section 17 of the Interpretation and General Provisions Act Cap. 2 of the Laws of Kenya to urge that time for the Cause of Action herein started running on 1.12.2014. They further relied on **Kenya Power and Lighting Co. Ltd. vs- Brookfield Academy Limited & Another [2007] eKLR** **Simba Corporation Ltd. –vs- Director General, NEMA & Another [2017] eKLR** and **John Musembi Mutisya –vs- Mash Bus Services Ltd. [2018] eKLR.**

4. They further contended that the Preliminary Objection raised herein does not fit the requirements of a Preliminary Objection as set out by **Mukhisa Biscuits Manufacturing Co. Ltd. -Vs- West Ends.** They therefore relied on **Attorney General and Another -Vs- Andrew Maina Githinji & Another [2016] eKLR** to urge that the Preliminary Objection herein should be dismissed with costs because it does not raise a pure point of law since evidence is required to ascertain whether the suit was filed out of time.

### **Analysis and Determination**

5. There is no dispute that terminated on 30.11.2014 the Claimants' contracts of service were and the suits herein were all filed on 1.12.2017. The issues for determination are whether the suits herein were filed outside the 3 years limitation period.

### **Whether the suits are Statute barred.**

6. If the answer to the question stated above is not found in the pleadings without calling evidence, then the Preliminary Objection by the respondent must fail. The foregoing view finds support from **Mukhisa**

### **Biscuits Manufacturing Co. Ltd. –vs- West End Distributors Ltd. [1969] E.A. 696**

where Law J. held that

***“a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as Preliminary point may dispose of the suit.***

***Examples are an objection to the jurisdiction of the Court or a of Limitation or a plea of Limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”***

7. In this case, the issue is limitation of time within which to bring a suit founded on contract of service under the provisions of the Employment Act. As already stated herein above, it is clear from the pleadings that the Cause of Action arose on 30.11.2014. Under Section 90 of the

Employment Act,

***“no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless***

*it is commenced within three years next after the act, neglect or default complained or in case of continuing injury or damage within twelve months next after the cessation thereof”*

8. In computation of time, the Interpretation and General Provisions Act, section 57 provides that-

*“In computing time for purposes of a written law, unless the contrary intention appears-*

*(a) A period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or the thing is done;*

*(b) If the last day of the period is Sunday or Public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next day following, not being an excluded day.”*

9. The foregoing Act defined a year under Section 2 to mean a period of 365 days. In this case therefore 3 years started to run from 1.12.2014 and ended on 30.11.2017. Upon checking the calendar for 2017, I confirmed that the said date fell on a Thursday which under Section 57 (1) (b) of the Interpretation and General Provisions Act was not an excluded day. Flowing from the said provision of the Act, the last date for the filing the suit herein was the Thursday 30.11.2017.

Consequently, it is my finding that the suits herein were all filed out of time by one day and they are Statute barred within the meaning of Section 90 of the Employment Act as read with the said Section 57 of the Interpretation and General Provisions Act.

**Whether the suit is incompetent, fatally defective and unsustainable in law**

10. The Respondent never prosecuted the second ground of the Preliminary Objection and it is treated as having been abandoned.

**Conclusion and Disposition**

11. In view of the finding that the suits herein are Statute barred, the Preliminary Objection by the respondent is upheld and all the suits struck out with no costs.

**Dated, Signed and Delivered in Open Court at Nairobi this 12th day of October 2018**

**ONESMUS N. MAKAU**

**JUDGE**