



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NO 83 OF 2013**

**SAMSON ODEGA OPONDO.....CLAIMANT**

**VERSUS**

**BIDCO OIL REFINERIES LIMITED.....RESPONDENT**

**RULING**

1. By a motion dated 21<sup>st</sup> May, 2018 the respondent sought the dismissal of the suit herein on account of being statute barred. The application was premised on grounds among others that at paragraph 4 of the claim, the claimant pleaded that:

*“on or about 2010 the respondent without any reasonable cause and/or justification unilaterally terminated the services of the claimant...”*

2. The claim was filed on 18<sup>th</sup> July, 2016. According to the respondent therefore, the claim was filed over five years after the claimant's termination from employment hence out of time by virtue of section 90 of the Employment Act. The claimant opposed the application and filed a replying affidavit through his counsel in which Mr Omas deponed among others that the matter arose from a previously instituted claim that is cause No. 1137 of 2017 in which Justice Nzioki wa Makau rendered judgment on 25<sup>th</sup> November, 2014 which equally granted leave to the claimant to file his claim.

3. Counsel further deponed that he has been negotiating the matter together with others on the same facts with the previous advocate on record for the respondent. In his submissions in opposition to the application counsel for the claimant was dismissed by the ruling of Justice wa Makau on 25<sup>th</sup> November, 2014 where the Judge observed as follows:

*“ the aggrieved employees have recourse as they are free to move the court on their own behalf or through an appointed agent such as an advocate or a fellow employee to act on their behalf”.*

4. The claimant's counsel took these observation by the learned Judge to mean that the court extended time to file suit. This court has stated severally that it lacks jurisdiction to extend time to file suit once the same has lapsed by virtue of section 90 of the Act. This position is backed by several decisions of the Court of Appeal which are binding on the Court.

5. Jurisdiction is everything. It is the foundation on which a court stands on while adjudicating a matter placed before it where it is lacking the court cannot proceed. Whereas my brother Justice Nzioki wa Makau may have stated that the claimants in the matter before him could on their own file suit, such filing was subject to law of limitation. The judge could not by his observation be construed to have granted leave to file suit out of time because he did not have jurisdiction to do so in the first place and if he did such an order would have been made *per incuriam*.

6. In the circumstances since the claimant does not deny the suit was filed outside limitation period but his only argument being that my brother Justice Nzioki wa Makau allegedly extended time, the suit would be struck out by reason of the fact that the same was filed out of time.

7. It is so ordered.

**Dated at Nairobi this 5<sup>th</sup> day of October, 2018**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 5<sup>th</sup> day of October, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.