



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 2171 OF 2015

(Originally Nairobi High Court Civil Case No. 424 of 2012)

DOUGLAS WACHIRA MUGAMBI **CLAIMANT**

v

THE HON. ATTORNEY GENERAL **RESPONDENT**

RULING

1. Douglas Wachira Mugambi (Claimant) instituted legal proceedings against the Hon. Attorney General (Respondent) before the High Court on 30 August 2012 alleging that his dismissal from employment through a letter dated 23 February 2005 (later varied to removal from service with benefits through letter dated 6 March 2006) was unlawful.
2. On 25 November 2015 the High Court directed that the suit be transferred to this Court because of jurisdiction, and on 28 September 2017 the Respondent was directed to file a Response. The Response was not filed.
3. When the Cause came up for hearing on 18 October 2018, the Respondent sought for more time to file a Response and the Court granted it up to 19 October 2018 to file and serve a Response and documents. The hearing was rescheduled to 23 October 2018.
4. On 23 October 2018, the Respondent raised a *Preliminary Objection* that the cause of action was caught up by limitation as provided for by section 4(1) of the Limitation of Actions Act.
5. In a brief response, the Claimant urged the Court to treat the question of limitation as a technicality curable by virtue of Article 159(2)(d) of the Constitution of Kenya, 2010. It was also urged that limitation does not go to jurisdiction.
6. It was not disputed by the Claimant that the *cause of action* accrued on 23 February 2005 (and/or as varied on 6 March 2006) or that the suit was filed on 30 August 2012.
7. In effect, the cause of action was commenced some 7 years after accrual (or 6 years 1 month if the effective date was 6 March 2006), outside the 6 year timeline in section 4(1) of the Limitation of Actions Act.
8. The Court of Appeal in *Divecon v Samani* (1995-1998) EA 48 held that to us, the meaning of the wording of section 4(1)is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. 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 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
9. Considering the binding authority, this Court holds that it has no authority or jurisdiction to entertain the suit and regrettably, it must down its tools.
10. The Cause is therefore struck out with no order as to costs.

Delivered, dated and signed in Nairobi on this 9th day of November 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Rombo instructed by Rombo & Co. Advocates

For Respondent Ms. Shitubi, State Counsel, Office of the Attorney General

Court Assistant Lindsey