



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 915 OF 2014

JESCA ASEYO EVAYO.....CLAIMANT

v

PREMIER BAG & CORDAGE LIMITED.....RESPONDENT

JUDGMENT

1. Jesca Aseyo Evayo (Claimant) commenced legal action against Premier Bag & Cordage Ltd (Respondent) on 30 May 2014 and she stated the Issue in Dispute as Wrongful dismissal and refusal to pay terminal dues.
2. In the Statement of Claim at paragraphs 9 and 10, the Claimant pleaded that she was verbally notified of the termination of her contract on or around 4 January 1999.
3. In its Statement of Defence, the Respondent contended that the cause(s) of action advanced by the Claimant were statute barred by virtue of section 4 of the Limitation of Actions Act.
4. The Cause was heard on 23 April 2018 when the Claimant testified and closed her case, and on 18 July 2018 when the Respondent's Human Resources Manager testified and thereafter the Respondent's case was closed.
5. The Claimant's submissions were not on file by this morning while the Respondent filed its submissions on 2 October 2018.
6. The Court will deal with the preliminary question of limitation which goes to jurisdiction first.

Limitation

7. The limitation period in relation to causes of action arising from contract in 1999 when the cause of action herein accrued was 6 years in terms of section 4 of the Limitation of Actions Act.
8. The Claimant therefore ought to have instituted these legal proceedings on or about 3 January 2005.
9. The Statement of Claim herein was lodged with the Court on 30 May 2014, some 15 years after accrual of the cause(s) of action.
10. Based on the binding authority of the Court of Appeal in *Divecon v Samani* (1995-1998) EA 48 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 this Court finds that the cause(s) of action herein is statute barred.
11. With the conclusion, it is not necessary for the Court to examine the other questions which arose for determination.
12. The Cause is dismissed 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. Khalwale instructed by Khalwale & Co. Advocates

For Respondent Mr. Otieno Omuga/Mr. Omuga instructed by Otieno Omuga & Ouma, Advocates

Court Assistant Lindsey