



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 981 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

**BERNARD MWANZIA KILONZO.....CLAIMANT**

**VERSUS**

**TIMBER CORNER LIMITED.....RESPONDENT**

**RULING**

This suit came up for mention on 30<sup>th</sup> July 2018 when Counsel for the Claimant was absent. The Respondent's Counsel, who was present, prayed that the matter be dismissed or the Court gives further directions. The Court directed that parties address the Court on jurisdiction in view of the fact that the claim is for a cause of action that arose between 2002 and 2008 while the suit was filed on 09<sup>th</sup> June 2015 and that both parties were to file their submissions and return to Court on 17<sup>th</sup> October 2018 to take a date for Ruling. The Respondent complied and served its submissions on 17<sup>th</sup> November 2018. The claimant did not file any submissions, although it was properly served with both the respondent's submissions and mention notice. In the absence of the Claimant, this Court directed that it would give a ruling on 07<sup>th</sup> December 2018.

**Respondent's Submissions**

The Respondent submits that its relationship with the Claimant was based on a contract of employment and that Section 4 of the Limitation of Actions Act clearly provides that actions founded on contract shall not be brought to court after the end of six years from the date on which the cause of action accrued. That 2008 being the time when the alleged termination happened, the claim was filed 7 years from when the cause of action arose, far beyond the limitation period. Further, that the Claimant did not seek leave of the court to file the suit out of time as stipulated by the law.

It is submitted by the Respondent that the Claimant seeking for dues from the year 2002 to 2008 raises questions because he was not even an employee during the stated period and that the respondent employed him on permanent basis in 2009. That the Claimant's case is therefore based on falsehoods and is meant to waste the court's time and that the Claimant is not entitled to the reliefs sought in his claim.

The Respondent finally submits that this Honourable court has no jurisdiction to hear and determine an employment matter filed long after the cause of action arose and it therefore cannot hear and determine this suit and prays that the same be dismissed with costs.

**Determination**

The issue for determination is whether this Court has jurisdiction to hear and determine this claim. In the case of *Thuranira Karauri vs Agnes Ncheche [1997] eKLR*, the Court of Appeal in Nyeri stated that the issue of limitation goes to jurisdiction and ought to be dealt with *in limine* and that it is not a procedural matter or a matter of discretion unless there was a specific application for that purpose held that:

*“The plaintiff's answer to the defendant's plea that the claim was time-barred was that she had obtained the necessary extension from the superior court. She did not produce any such order and none was shown either to the Judge or to the counsel for the defence. We do not understand how the Judge could proceed with the trial without finally determining such an important point of jurisdiction. The order for extension, if indeed obtained, as alleged, should have been served on the defendant with the plaint. And since it was not, the plaintiff's Advocate was under a duty to prove its existence as part of the plaintiff's case at the trial. Since this was not done, the defence of limitation raised by the defendant in his defence stood, and the plaintiff should have been nonsuited*

*forever. In view of this failure, the plaintiff's suit was incompetent and should have been struck out."*

In the claim herein, the claimant has pleaded at paragraphs 3 and 4 as follows –

*That at all material times to this suit the Claimant was employed by the Respondent's Company from February 2002 as a Casual Labourer and was earning a salary of Kshs.9,300/= per month. In the year 2008 he was confirmed as a permanent employee earning a salary of 22,129/= per month until his dismissal.*

*In or about March 2014, the Claimant's services were terminated without notice after the Claimant requested the Manager for a salary increment due to the overwhelming workload of operating all the machines in the workshop."*

His prayers are as follows –

a. Service pay from year 2002 to year 2008                      Kshs.27,900

b. House Allowance from year 2002 to year 2008              Kshs.100,440

**Total                      Kshs.128,340**

c. Costs of this suit together with interest thereon at such rate and for such period as this Honourable Court may deem for to order.

d. Any other just and equitable relief as this Honourable Court may deem appropriate.

It is clear from the prayers that the claim which is for the period 2002 to 2008 is out of time and as such this court has no jurisdiction to hear and determine the same.

The foregoing being the case, the claim herein is dismissed as it is time barred and this Honourable Court lacks jurisdiction to hear and determine the claim.

There shall be no orders for costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7<sup>TH</sup> DAY OF DECEMBER 2018**

**MAUREEN ONYANGO**

**JUDGE**