



**REPUBLIC OF KENYA**

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

**KENYA AT NAIROBI**

**CAUSE NO 476 OF 2017**

**NGETHE KARUKU KAGE.....CLAIMANT**

**VERSUS**

**MFI DOCUMENTS SOLUTIONS LIMITED.....RESPONDENT**

**RULING**

1. The claimant herein pleaded that he was employed by the respondent as a Group Insurance Manager from 1<sup>st</sup> November, 2001 to 6<sup>th</sup> February, 2014 when he resigned without any problem. By suit filed on 10<sup>th</sup> March, 2017, the claimant sought to be paid for untaken leave during the period he worked for the respondent, education allowance and transport allowance.
2. The respondent refuted the claimant's allegations and of importance averred that the claimants claim was time barred. The claimant's letter of resignation is dated 6<sup>th</sup> February, 2014 informing the respondent that his resignation would take effect on 7<sup>th</sup> February, 2014. That is to say the following day. This letter is found at page 4 of the Claimant's bundle of documents. The letter did not raise any issue of any outstanding claim at the time of claimant's exit.
3. However, by a letter dated 25<sup>th</sup> October, 2016 referring to previous communication, the claimant made the above referenced claims and describes the letter as a formal demand note. By a letter dated 26<sup>th</sup> January, 2017 the claimant further through his counsel on record issued a demand letter seeking his terminal dues as referred to above. The letter stated in part that for two years the claimant had been pursuing the terminal dues yet the respondent had ignored to pay the same. The advocates concludes by giving the respondent 14 days' notice to pay the alleged terminal dues in default a civil suit would be filed against the respondent. A suit (this suit) was subsequently filed approximately one month ten days later.
4. The termination of employment relationship between the parties herein ceased when the claimant resigned on 7<sup>th</sup> February, 2014. Therefore under Section 90 of the Employment Act any claim arising out of that contract should have been brought within three years from the date of the claimant's resignation. If as is the case here, the claimant resigned on 7<sup>th</sup> February, 2014.
5. Therefore under Section 90 of the Employment Act any claim arising out of that contract should have been brought within three years from the date of the claimant's resignation. If as is the case here, the claimant resigned on 7<sup>th</sup> February, 2014, the claim herein ought to have been filed on or before 8<sup>th</sup> February, 2017. The claim was filed on 10<sup>th</sup> March, 2017 which is outside the period specified by section 90 of the Act hence statute barred.
6. The court neither has jurisdiction to entertain suits that are barred by Section 90 of the Employment Act nor does it have power to extend time once it has lapsed even by one day. The claimant was fairly a senior person in the respondent and also aware of his rights hence hiring the firm of Shapley Barret an old and well established law firm in the country could have properly guided the claimant on the need to bring this claim within the time provided for under the Act.
7. The respondent's objection is thus found merited and the suit is hereby struck out with costs as statute barred.
8. It is so ordered.

Dated at Nairobi this 7<sup>th</sup> day of December, 2018

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 7<sup>th</sup> day of December, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.