



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 240 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

GILBERT WACHILONGA WANYONYI.....CLAIMANT

VERSUS

THE PRINCIPAL,

KUYWA GIRLS HIGH SCHOOL.....1ST RESPONDENT

THE CHAIRMAN, BOARD OF MANAGEMENT

KUYWA GIRLS HIGH SCHOOL.....2ND RESPONDENT

RULING

By notice of preliminary objection dated 21st September 2016 and filed on 23rd September 2016 the respondent prays that the claim herein be struck out and or be dismissed with costs on grounds –

1. That the claimant's claim is fatally defective, incompetent, and untenable as it offends the provision of Employment Act both repealed and present.
2. That the claimant's claims is statutorily time barred and should be struck out and/or dismissed with costs.

The respondent submits in support of the preliminary objection that the cause of action arose on 22nd day of July 2002 being the date of the claimant's letter of termination, that according to the provisions of Section 90 of the Employment Act, the claimant ought to have filed his claim by 22nd July 2005 and any claim filed after that date is "dead on arrival" and is unsustainable. It is the respondent's submission that Section 90 is very clear and precise.

The claimant opted not to file any submissions on the preliminary objection.

Determination

The claim herein was filed on 17th August 2016. Under paragraphs 4 and 5 of the claim the claimant pleads as follows –

"The 1st and 2nd respondents retained and/or employed the claimant in September 1992 but confirmed on the 7th August 1993 one year later as an Accounts Clerk on a permanent basis.

The claimant served the respondents with loyalty until 13th June 2002 when the respondents purported to suspend him from service on allegation of irregularity and indicators of fraud when writing receipts."

The cause of action in the claim having arisen on 13th June 2002 the applicable law is not the Employment Act, 2007 but Section 4(1) of the Limitation of Actions Act in so far as an employment relationship is a contract.

The said section provides that claims in contract must be commenced within six years from the date on which the cause of action arises.

The cause of action herein having arisen on 13th June 2002, the claim should have been filed on or before 13th June 2008. It was filed on 17th August 2016, more than 14 years after the cause of action arose.

The claim is thus bad in law and this court has no jurisdiction to entertain the same with the result that the preliminary objection succeeds and is upheld. Consequently, the claim herein is struck out.

There shall be no orders for costs.

DATED AND SIGNED AT NAIROBI ON THIS 9TH DAY OF NOVEMBER 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 6TH DAY OF DECEMBER 2018

MATHEWS NDERI NDUMA

JUDGE