



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 25 OF 2017

(Formerly Kisumu HC Petition No. 25 of 2012)

(Before Hon. Justice Mathews N. Nduma)

PAUL ABUTO OBWON & 61 OTHERS.....PETITIONERS

VERSUS

MUHORONI SUGAR COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The Petition was filed on 30th April, 2012 by 62 Petitioners.
2. From the face of the Petition the cause of action arose on 30th April, 2001 when the Petitioners were placed on unpaid leave for a minimum period of 120 days via a general circular headed 'Unpaid Leave'. The Respondent was subsequently placed under receivership and the Petitioners were not recalled back to work. It is not in dispute that the Petitioners were not paid their terminal dues. In the words of the petitioners, placing them on indefinite unpaid leave amounted to constructive dismissal of employment.
3. The Petition is opposed vide a replying affidavit filed on 8th November, 2012 in which Preliminary Objection is raised to the effect that the suit, based on termination of employment contract, now disguised as a Constitutional Petition is time barred by dint of section 4(1) of the Limitation of Actions Act Cap 22 Laws of Kenya, the cause of action, if at all, having arisen immediately after the expiry of 120 days from the date the Petitioners were placed on unpaid leave. Therefore it is submitted the cause of action arose on 30th October, 2001 and time within which to file the suit expired six (6) years later, being on or about 30th October, 2007.
4. The court is bound to determine the preliminary objection first as guided by the decision of the Court of Appeal in Mukisa Biscuits Case.
5. From the facts of the case which are not in dispute, the Petitioner does not raise any constitutional violations based on the 1963, erstwhile Constitution of Kenya.
6. Similarly no transitional justice issues have been raised in this matter.
7. It is the court's considered finding that the decision by Hon. Justice Isaac Lenaola (as he then was) in **HCCC at Nairobi Petition No. 204 of 2013, Njuguna Githiru vs The Attorney General** is not applicable to the circumstances of this case.
8. The Petitioners have not preferred any justifiable reason why they did not make their claims as against the receiver manager within the six years limitation period.
9. Indeed, following the Court of Appeal decision in Devicon case, no court is permitted to extend limitation of time within which to file a suit based on contract upon expiry of six (6) years limitation period. Disguising the suit as a constitutional petition does not suffice.
10. Accordingly, this court lacks jurisdiction to delve into the merits of this suit. The same is struck out for want of jurisdiction.

Dated, Signed and Delivered in Kisumu this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Joseph N. Musomba & Co. Advocates for Claimant

Otieno Ragot & co. Advocates for the Respondent

Chrispo – Court Clerk