



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 12 OF 2017

(Before Hon. Justice Mathews N. Nduma)

IN THE MATTER OF ARTICLE 22(1) AND 40 & 41 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA

(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)

PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

PETER ODONGO OBURA.....PETITIONER

AND

THE SECRETARY OF THE COUNTY GOVERNMENT OF MIGORI.....RESPONDENT

J U D G M E N T

1. The Petition was filed on 6th March, 2017. The Petitioner seeks payment of Kshs.426,358 which he purports the Respondent deducted from his salary to remit to the family bank limited, Kisii Branch towards a loan repayment. The deductions were done for 29 months between July 2007 to September, 2009.
2. This suit is a simple claim for money lawfully deducted from salary more than eight (8) years from the date the suit was filed.
3. The Claim is statute barred by dint of section 4(1) of the Limitation of Actions Act, Cap 22 Laws of Kenya which prohibits a suit based on contract to be filed more than six (6) years from the date of action arose.
4. Furthermore section 90 of Employment Act 2007, which came into effect in August 2008, prohibits filing of suit based on Employment contract, more than three years from the date the cause of action arose.
5. The Petitioner, has made a futile attempt to disguise this simple claim into a constitutional petition under Article 22 and 23 of the Constitution of Kenya to defeat the doctrine of laches. This abuse of court process, which we continue to see in this court must be snipped in the bud.
6. The Court of Appeal in Devicon case has strictly prohibited superior courts from hearing and determining suits that are clearly time barred. Extension of time, which was not sought in the present case is also not permissible for suits founded on contract in terms of the Devicon doctrine.
7. The suit is time barred and this court lacks jurisdiction to entertain it and is dismissed with costs.

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

Mathews N. Nduma

Judge

Appearances

Mr. Ojwang Agina for Petitioner

Chrispo – Court Clerk