



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU**  
**CAUSE NO. 232 OF 2014**

*(Before Hon. Lady Justice Maureen Onyango)*

**KIBWAMBOK CHUMBA ..... CLAIMANT**

**-Versus-**

**CHEBUT TEA FACTORY ..... RESPONDENT**

**RULING**

Before me for determination is a notice of motion filed by the Respondent under Rule 16(1) of the Industrial Court (Procedure) Rules 2010 and section 4(1) of the Limitation of Actions Act. The motion is dated 5th July 2016 and seeks the following orders -

1. **THAT** this suit be dismissed for being statute barred.
2. **THAT** the claimant bears the cost of this application and the entire suit.

The grounds upon which the motion is premised are that -

- a) The claimant's suit is premised on an alleged suspension from employment vide a show cause letter dated 11th October, 2001.
- b) The claimant's cause of action as premised on the alleged suspension dated of 11th October, 2001 could only remain valid for a period of six (6) years.
- c) The claimant's cause of action, if any, therefore expired on the 10th October, 2007.
- d) The claimant's suit therefore as filed on the 4th September, 2014 is statute barred.
- e) This court has no jurisdiction to preside over and or determine the issues raised in this suit.
- f) This suit is unmaintainable in law, it is a non-starter, incurably defective, a substantive and procedural monumental nullity and an unmitigated abuse of the court process.

In the supporting affidavit of JOHN K. OMANGA it is deponed that the Claimant was placed on suspension by letter dated 11th October 2001, that the Respondent's letter dated 8th September, 2011 which the Claimant relied on to file suit is not a letter of dismissal as alleged in the statement of claim, that the letter only informed the claimant that the Respondent did not have any records of the Claimant's employment with the company and that if such records existed they must have been discarded in line with the law. It is further deponed that the Claimant's cause of action became time barred 6 years after the

suspension and the claimant has no cause of action capable of prosecution as the claim was extinguished upon the expiry of the limitation period.

It is further deponed that the Respondent does not have records or witnesses who were in employment when the claimant left service, that the Respondent has a policy of destruction of files that are inactive for 6 years and does not hold any records of the claimant's employment. That as such the Respondent would be greatly prejudiced should the case proceed to hearing. The Respondent prays that the suit be dismissed in the interest of justice and public policy.

The claimant filed a replying affidavit in which he states that he was suspended from employment by letter dated 11th October, 2001 but was never informed of termination of his employment until 8th September, 2011. He depones that the cause of action therefore arose on 8th September, 2011 and the claim is therefore not time barred.

The Claimant further depones that prior to 8th September, 2011 he visited the Respondent's factory several times but was always told to await the decision of the board. He further stated that the applicant forwarded to him a tabulation of his terminal dues by letter dated 11th June, 2015. He prays that the application be dismissed.

The application was argued by way of written submissions.

### **Determination**

Having considered the pleadings and written submissions, the only issue for determination is when the course of action in the statement of claim arose.

The statement of claim states the Claimant was suspended from work by letter dated 11th October, 2001. At paragraph 11 of the claim under particulars of unlawful termination he states that he has not been paid salary since October 2001. Thus the course of action arose when he was suspended and his salary was stopped.

The Claimant's averment that he learnt about the termination of his employment from the respondent's letter dated 8th September, 2011 is factually not correct as the letter only informs the Claimant that there are no records of his employment with the Respondent. The document attached to claimant's replying affidavit as Annexure KC 6 is also not an acknowledgement of debt and even if it was, is not part of the documents in the statement of claim.

The law applicable to the Claimant's employment is the repealed Employment Act under which employment was a contract whose limitation period is governed by section 4(1) of the Limitation of Actions Act. The limitation period for the claim was 6 years and lapsed on 11th October 2007, about 8 years before the claim was filed.

The Claim herein is therefore bad in law for being time barred and this court has no jurisdiction to hear and determine the same as was stated by the court in all the cases relied upon by the Applicant being **Gerald Muli Killu v Barclays Bank of Kenya [2016] eKLR** which in my opinion was decided per incuriam by the Court of Appeal as the cause of action arose on 31st January, 2005 and the claim was filed on 15th February 2010, some 5 years after the cause of action arose and before the limitation period of 6 years applicable to the claim had lapsed. The cause of action therein arose before the Employment, 2007 was enacted. The case also referred to the claim having been the subject of the Trade Disputes Act which exclusively covered disputes involving trade unions while the case was not a dispute filed by or involve a trade union.

The other cases relied upon by the applicant and which I agree with, are JOYCE WANJIKU MUCHIKO & ANOTHER v TELKOM KENYA LIMITED, [2014] eKLR, FRED MUDAVE GOGO v G4S SECURITY SERVICES (K) LIMITED [2014] eKLR and PHILIP GITONGA MBIRITI v EQUITY BANK LIMITED [2016] eKLR.

In the circumstances, the application succeeds and the claim filed herein by the claimant is struck out for being time barred.

There shall be no orders for costs.

**DATED SIGNED AND DELIVERED THIS 19TH DAY OF JANUARY, 2017**

**MAUREEN ONYANGO**

**JUDGE**