



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**OF KENYA AT NAIROBI**  
**CAUSE NO. 391 OF 2015**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 21<sup>st</sup> February, 2017)**

**KENNEDY NGIGI GACHIBU.....CLAIMANT**

*VERSUS*

**UCHUMI SUPERMARKETS LIMITED.....RESPONDENT**

**RULING**

1. The Respondents herein have preferred a Preliminary Objection before this Court in that the Claim is incompetent, fatally defective and an abuse of the Court process as the same is statutory time barred and offends the mandatory provisions of Section 90 of Employment Act 2007 Laws of Kenya.
2. They have submitted that this claim was filed on 16.3.2015 over 5 years after the Claimant's termination on 21<sup>st</sup> November 2010.
3. The Respondent opposed this Application through a Replying Affidavit filed in Court on 3.7.2015.
4. The Respondent/Claimant avers that he was employed by the Respondent on 1.7.2010 but commenced employment on 27.9.2011. That he worked for Respondent for 4 months and was suspended from duty on 23.11.2011 orally and criminal proceedings instituted against him being Criminal case No. 2014 of 2010.
5. Following his acquittal, he sought to be reinstated and to have his suspension lifted through a meeting held on 20.5.2014 with the Respondent's HR representative called Milka Kirwa.
6. He avers that he was terminated on or about 20<sup>th</sup> May 2014 and not 23<sup>rd</sup> November 2010 as averred.
7. A Preliminary Objection is a matter to be determined on a pure point of law which ultimately may or may not determine the case from the onset. This was the holding in the case of **Mukisa Biscuits** which stated that an issue of Limitation is an issue that could be argued as a Preliminary Order and may if proved dispose of the case in its entirety.
8. Section 90 of Employment Act states as follows:

***“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be***

***instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”***

9. It therefore follows that no suit can be instituted more than 3 years after the cause of action arises in employment cases.

10. From the pleadings on record, the Claimant was summarily dismissed on 16<sup>th</sup> December 2010. This is as per the dismissal letter Appendix 2 filed by the Respondents, after the Claimant confessed of using reduced gift vouchers to get money from the till vide his own statement of 22.11.2010 (Appendix 3).

11. Despite the fact that the Claimant /Respondent was served with the pleadings of this case including the attachments to the Application, which included his summary dismissal letter, he has not addressed his mind to the same. He never responded to the said averment.

12. His claim is that he was orally suspended; but in view of a letter showing otherwise from which he has not directed his mind to, I find that he was indeed terminated on 16<sup>th</sup> December 2010 as per the dismissal letter. He filed this case in 2015, way after the 3 years Limitation provided under Section 90 of employment Act.

13. It is therefore the finding of this Court that the Preliminary Objection has merit. The same is allowed and this cause is struck out for being time bared.

14. Costs to the Applicant/Respondent.

Read in open Court this 21<sup>st</sup> day of February, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kilonzo for Respondent- Present

No appearance for Applicant