



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 304 OF 2016

BETWEEN

EMMANUEL SAFARI YAA..... CLAIMANT

VERSUS

KENYA POWER & LIGHTING COMPANY LTD.....RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection dated 9th August 2016, seeking to have the Claim struck out, on the grounds that the Claim is *res judicata*, and time-barred under Section 4(1) of the Limitation of Actions Act Cap 22 the Laws of Kenya, and Section 90 of the Employment Act.
2. The background to the dispute is that the Claimant was employed by the Respondent in 1980s. He was arrested on 7th September 2010 for the offence of soliciting a bribe. He was summarily dismissed on 28th September 2010.
3. He filed the present Claim on 15th April 2016, stating the Respondent unfairly and unlawfully terminated his contract of employment. He prays for arrears of salary and compensation.
4. He had filed High Court at Mombasa, Petition No. 23 of 2011 against the Respondent, based on the same facts, and asking the Court to declare that summary dismissal was a nullity.
5. The Petition ended in a Judgment by the High Court, dated 28th May 2014 dismissing the Petition.
6. Parties agreed in Court on 13th February 2017, to have the Objection considered on the strength of the Pleadings and Submissions. The Respondent filed its Submissions on 24th February 2017. Unfortunately the Claimant appears not to have filed any Submissions.

The Court Finds:-

7. The Claim herein was filed on 15th April 2016. The Claimant was summarily dismissed on 28th September 2010. He filed the Claim well beyond the 3 years given under Section 90 of the Employment Act 2007, on filing of employment disputes, from the date the cause of action accrues.
8. The Claimant filed Petition at the High Court on 25th March 2011. The Petition was heard on merit.

It was concluded by the Court that the Petitioner was accorded an opportunity to be heard. The Court held the Respondent had the right to summarily dismiss the Petitioner under Section 44 of Employment Act 2007. The Court stated it did not find merit in the Petition.

9. The High Court therefore ruled on the merit of the Petition, as well as ruled that the Petitioner had invoked the High Court's jurisdiction improperly. It was open to the High Court to transfer the Petition to the Employment and Labour Relations Court; instead, the High Court found the Petition to have no merit, and dismissed the same with costs to the Respondent.

10. The Claim herein is therefore time-barred, as well as *res judicata*. It is based on the same operative facts, as the Petition. It is between the same Parties. It was filed out of time.

IT IS ORDERED:-

a. The Preliminary Objection raised by the Respondent is upheld, and the Claim herein struck out.

b. No order or the costs.

Dated and delivered at Mombasa this 31st day of March 2017.

James Rika

Judge