



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 153 OF 2017

BETWEEN

MOHAMED OMAR DOYO CLAIMANT

VERSUS

KENYA SAFARI LODGES & HOTELS LIMITED.....RESPONDENT

RULING

1. The Claimant has applied through the Notice of Motion dated 17th February 2016, to amend his Statement of Claim, to include prayers relating to unfair and unlawful termination.
2. In his original Claim filed against the Respondent and the Attorney- General at the Resident Magistrate's Court Mombasa, the Claimant sought general damages for wrongful arrest and malice.
3. The Resident Magistrate dismissed his entire Claim based on the law of limitation of time applicable to suits brought against public entities. On appeal, the Court upheld dismissal of the suit against the Attorney- General, but found the law governing limitation of time against public entities, should not have applied to the Co-Defendant, the Respondent herein.
4. The Resident Magistrate's suit was transferred to the Employment and Labour Relations Court on ground of jurisdiction, and registered as Cause Number 153 of 2017.
5. While the Appeal against the Judgment of the Resident Magistrate's Court was pending, the Claimant filed Cause Number 1498 of 2012 at Industrial Court Nairobi, against the original Defendants, pursuing remedies for unfair and unlawful termination. The Cause was transferred to the Industrial Court at Mombasa and registered as Cause Number 202 of 2013.
6. It was under Cause Number 202 of 2013 that the Respondent objected to the jurisdiction of the Court under Section 90 of the Employment Act 2007, submitting the Claim was time-barred. The Court upheld objection, and dismissed the claim for unfair and unlawful termination.
7. The Respondent opposes the Application for amendment of the present Statement of Claim, arguing the amendments sought, would result in the introduction of the Claim which was rejected under Cause Number 202 of 2013.
8. The Parties filed Submissions, and the Application was heard on the 3rd March 2017.

The Court Finds:-

9. The Court in Cause Number 202 of 2013, ruled it did not have jurisdiction, to entertain the Claim for unfair and unlawful termination, based on Section 90 of the Employment Act 2007.

10. The proposed amendments would have the effect of introducing the same claims rejected as being time-barred in the previous Cause.

11. The Court does not think that what happened under the previous Cause was dismissal based on mere technicality; the Court upheld objection under Section 90, effectively declining jurisdiction.

12. If the Court did not have jurisdiction then, it cannot have jurisdiction today, and accept same claims, introduced by way of amendment to a longstanding Claim.

13. Allowing the Application would also mean the Respondent is denied the benefit of having earlier successfully raised the defence of time-bar. This would not be in keeping with the principle of fair administration of justice.

14. Lastly, the Claimant still names the Attorney- General as a Respondent in its Application. The Claim against the Attorney General was dismissed at the initial Trial before the Resident Magistrate's Court, and dismissal upheld on Appeal. The only Claim, which remains to be heard, is against Kenya Safari Lodges & Hotels Limited.

IT IS ORDERED:-

a. The Application is rejected.

b. No order on the costs.

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

James Rika

Judge