



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 354 OF 2016**

**ABUBAKAR ALI**

**CLAIMANT**

v

**EGERTON UNIVERSITY**

**RESPONDENT**

**RULING**

1. There are 2 applications presented for determination in this ruling.
2. One is a motion dated 8 December 2016 by the Claimant seeking that the Reply to Memorandum of Claim be struck off and summary judgment be entered in his favour.
3. Second is a Preliminary Objection dated 16 January 2017 by the Respondent seeking that the Cause be dismissed for having been instituted outside the prescribed limitation period in terms of section 4(1) of the Limitation of Actions Act.
4. Because the objection relates to jurisdiction, the Court will determine it first and depending on the conclusion, the Claimant's motion will be examined.

**The Preliminary Objection**

5. The Respondent seeks to defeat the Cause on the ground that it was statute time barred by dint of section 4(1) of the Limitation of Actions Act.
6. Section 90 of the Employment Act, 2007 was also cited but it is clearly inapplicable as it commenced on 2 June 2008, long after the cause of action had accrued.
7. In paragraph 5 of the Memorandum of Claim, it is pleaded that the Claimant served the Respondent until 20 August 1996 while in paragraph 15 the Claimant pleaded that he was informed of the summary dismissal on 30 August 1996.
8. It cannot be disputed that the cause of action advanced by the Claimant is contractual in nature and in terms of section 4(1) of the Limitation of Actions Act, it should have been commenced within 6 years, that is, latest by 29 August 2002.
9. The action was commenced on 15 September 2016, some 20 years after the cause of action accrued.
10. The cause of action therefore is time barred in line with section 4(1) of the Limitation of Actions Act, and relying on the decision of the Court of Appeal in *Divecon v Samani* (1995-1998) 1 EA 48, leave cannot be granted to commence or admit it out of time even if the Claimant had sought leave because the

