



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 342 OF 2016

JANE NJERI MBUGUA.....CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. This ruling arises from a preliminary objection raised by the Respondent by notice dated 31st March 2016 to the effect that the Claimant's claim is statute barred by dint of Section 90 of the Employment Act, 2007.

2. Counsel for the Respondent submitted that the cause of action herein arose on 21st July 2011 when the Disciplinary Committee made the decision that the Claimant be suspended for one (1) month without pay and that she be surcharged for irregular payments made to her. The Claimant therefore ought to have brought her claim by 21st July 2014.

3. In response the Claimant states that her claim is based on the second limb of Section 90 which deals with continuing injury. Counsel for the Claimant submitted that since the deductions arising from the surcharge are still in force, the claim cannot be said to be time barred.

4. The question in this application is when the cause of action arose. In *Drummond Jackson v Britain Medical Association (1970) 2 WLR 688* the Court defined a cause of action as:

“an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

5. From the Claimant's Statement of Claim dated 4th March 2016, her claim is based on her interdiction and surcharge. That being the case, the act which caused the Claimant to complain to the Court must be the decision of the Disciplinary Committee taken against her on 21st July 2011. This is the date when time began to run against the Claimant and she therefore ought to have brought her claim within three (3) years from that date.

6. The fact that the deductions arising from the surcharge are still ongoing does not mean that the cause of action is a continuing wrong within the meaning of Section 90 of the Employment Act.

7. In *Hilarion Mwabolo v Kenya Commercial Bank [2013] eKLR* this Court held that accrual of the cause of action in a claim arising from an employment contract takes effect from the date of the action complained of. Accrual of a cause of action is a definite event which takes effect upon an action that a

claimant deems injurious to them. In this case the action complained of is the decision of the Disciplinary Committee taken on 21st July 2011.

8. The effect of the foregoing is that the Claimant's claim is statute barred and as held by the Court of Appeal in *Thuranira Karauri v Agnes Ncheche [1997] eKLR* limitation of time goes to the jurisdiction of the Court to entertain the claim before it.

9. As a consequence the Claimant's claim is struck out with no order for costs.

10. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24TH DAY OF MARCH 2017

LINNET NDOLO

JUDGE

Appearance:

Miss Kweka for the Claimant

Miss Ruto for the Respondent