



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 157 OF 2016

(BEFORE D. K. N. MARETE)

MUSTAPHA BARASA.....CLAIMANT

VERSUS

ELDORET GRAINS LIMITED.....RESPONDENT

RULING

This is an application by way of a preliminary objection dated 6th December, 2016 as follows;

That at the hearing of this claim the Respondent shall raise a preliminary objection that the Claimant's claim is time barred and should be struck out with costs.

When the matter came for hearing on 23rd February 2017, it was set for determination by way of written submissions.

It is not defended or at all. This is despite service to the Claimant/Respondent.

The Applicant/Respondent in her written submission dated 25th January 2017 and also in support of the application comes out as follows;

It is important for the Honourable court to note that the claimant in his memorandum alleged that his employment contract was unfairly and unlawfully terminated by the Respondent on 20th April, 2011. He filed the

suit on 18th November, 2016. This is after 5 years 6 months had lapsed. The claimant's right to sue the respondent for the alleged unfair and unlawful termination lapsed at the latest on 20th April, 2011.

Again,

Section 90 of the Employment Act of Kenya, 2007, clearly states that notwithstanding the provisions of Section 4 (1) of the Limitation of Actions Act, Cap 22, all civil actions or proceedings arising out of the Act or a contract of service such as the one in this case, shall be filed within 3 years. Furthermore, the claimant did not seek the leave of the court to file suit out of time as required by law. Therefore, the claimant's suit having been filed after 3 years had

lapsed, without seeking leave for the same, is time barred under Section 90 of the Act. This claim is therefore an abuse of the court's process, bad in law and this honorable court has no jurisdiction to entertain it and the same ought to be struck out with costs to the respondent.

This matter is made the poorer by the absence of a defence. Whereas limitation of action on grounds of time bar can be defended by interventions in rebuttal by able respondents, this is lacking in the circumstances. The answer is total silence on the part of the claimant. I am therefore inclined to agree with the respondent and dismiss the preliminary application with costs.

Delivered, dated and signed this 26th day of April 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Mugumia holding brief for Mr. Kitiwa instructed by Kitiwa & Company Advocates for the Respondent.
2. No appearance for the Claimant.