



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 852 OF 2015

TITUS MUSILI MUSYOKA.....CLAIMANT

VERSUS

TANA AND ATHI RIVER DEVELOPMENT AUTHORITY....RESPONDENT

RULING

1. This ruling relates to the Respondent's Preliminary Objection raised by notice dated 16th January 2017 to the effect that the Claimant's claim is statute barred by dint of Section 90 of the Employment Act, 2007. When Counsels for the parties appeared before me on 6th February 2017 they agreed to dispense with the objection by way of written submissions.
2. In the submissions filed on behalf of the Respondent on 14th February 2017, it is submitted that the Claimant was summarily dismissed on 21st September 2005 and his claim filed on 29th May 2015, almost ten years after dismissal was way out of time.
3. In the Claimant's submissions filed on 27th February 2017, it is submitted that the Preliminary Objection raised by the Respondent does not raise a pure point of law as defined in *Mukisa Biscuit Company v Westend Distributors Limited (1969) EA 696*.
4. In this regard, the Claimant states that the objection raises matters of evidence which require to be ascertained; for example whether the Claimant was served with the termination notice after his suspension. The Claimant adds that it had not been made known to him that his contract had been terminated and that was why after the end of the criminal case against him he sought reinstatement.
5. The Respondent's Preliminary Objection is premised on Section 90 of the Employment Act, 2007. The Court however noted that the Claimant was dismissed by letter dated 21st September 2005 which backdated the dismissal to 1st October 2004. Evidently, this was before enactment of the current Employment Act. The limitation law applicable to the Claimant's case is therefore the Limitation of Actions Act.
6. Section 4(1)(a) of that Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued and as held by the Court of Appeal in *Divecon Limited v Shirinkhanu Sadrudin Samani (1995-1998 EA 48)*, the Court has no jurisdiction to extend time.
7. In the majority decision in *Attorney General v Andrew Maina Githinji [2016] eKLR* the Court of

Appeal upon review of several decisions from this Court, settled the accrual date in claims for unlawful termination as the effective date of the termination.

8. In the instant case, the accrual date is not in dispute. The Court therefore finds the argument advanced on behalf of the Claimant that he was not aware that he had been dismissed strange because in his application for reinstatement, he acknowledged that he had been dismissed in 2004.

9. The Court of Appeal has also held in *Thuranira Karauri v Agnes Ncheche (Civil Appeal No 19 of 1996)* that limitation is a jurisdictional issue which must be dealt with immediately it is raised.

10. In the case now before me, the cause of action accrued in 2004 and the claim filed in 2015 is way out of time. The result is that the Preliminary Objection raised by the Respondent is upheld and the Claimant's claim is struck out.

11. Each party will bear their own costs.

12. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF MAY 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyamu for the Claimant

Mr. Mulekyo for the Respondent