



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**CAUSE NUMBER 1714 OF 2014**

**RABASA ONYANGO.....CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**RULING**

1. The respondent in this matter has objected to the jurisdiction of the court to entertain this suit on the basis that the same is statute barred by virtue of Section 90 of the Employment Act.
2. According to counsel for respondent, the claimant after undergoing internal disciplinary process was found guilty of the charges against him and dismissed on 1<sup>st</sup> October 2010. The suit challenging the dismissal therefore ought to have been brought by 1<sup>st</sup> October 2013.
3. The suit herein was filed on 2<sup>nd</sup> October 2014 which the respondent argue is more than a year outside the statutory bar.
4. Counsel for the claimant on the other hand contended that the cause of action accrued 4<sup>th</sup> January 2012 when the respondent advised the claimant that his appeal against the dismissal had no merit.
5. Employment relationship is contractual and where the parties to that contract have agreed to conduct their affairs within the dictates of that contract the court will unless for breach of the law or the constitution be reluctant to interfere.
6. The respondent has its own code of regulation which provides for a system and process of appeal against the dismissal of a teacher. A teacher aggrieved by the decision at the first instance to dismiss has the right of appeal. Whereas the dismissal stands unless overturned on appeal, its finality accrues upon the upholding of the same by the appellate body.
7. It is upon the decision of the appellate body that time begins to run against the employee in terms of Section 90 of the Employment Act. To reckon time for purposes of limitation, from the date of the initial dismissal would render purposeless, the appellate process. An employee approaching the court before exhausting the internal disciplinary process would be doing so prematurely.
8. The court therefore overrules the objection and directs that the matter shall proceed to trial on merit.
9. It is so ordered.

Dated at Nairobi this 16<sup>th</sup> day of June 2017

**Abuodha J. N.**

**Judge**

Delivered at Nairobi this 16<sup>th</sup> day of June 2017

**In the presence of:-**

Okwaro for the Claimant

No appearance for the Respondent

**Abuodha J. N.**

**Judge**