



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1647 OF 2015

KENYA BUILDING CONSTRUCTION TIMBER AND

FURNITURE INDUSTRIES EMPLOYEES UNION CLAIMANT

VERSUS

DECO ROOFING SYSTEMS LIMITED RESPONDENT

RULING

1. The ruling herein relates to the Notice of Preliminary Objections filed by the respondent, Deco Roofing Systems Limited on 8th March, 2016 and on the grounds that;

1. The claimant's claim is incompetent because the same is statute barred by dint of section 90 of the Employment Act.

2. There is no valid claim and hence this court is deprived of jurisdiction to hear and determine the entire claim.

3. On 11th May, 2016 both parties agreed to file written submissions to address the objections filed each party had 14 days to file and serve the other. The Respondent filed written submissions on 18th May, 2016; served the Claimant on and no responses were filed. On 25th May, 2017 both parties were in court, the Claimant had not filed written submissions and did not have any reasons for such inordinate delay. The court gave the Claimant the day to file such missing submission and there was no compliance.

3. The Respondent submits that the claimant's case is premised on the alleged employment of the grievant on 5th May, 2008 and 18th February, 2011 respectively. The grievant were dismissed on 5th November, 2011.

4. On such facts, by application of section 90 of the Employment Act, a claim premised on the provisions thereof cannot lie after the lapse of 3 years since the cause of action arose. The suit having been filed on 17th September, 2015 is outside the statutory period required in law and as such the court has no jurisdiction to entertain the claim.

5. The Respondent has relied on the case of **Thuranira Karauri versus Agnes Ncheche, Court of Appeal (Nyeri) Civil Appeal No.192 of 2006; Joseph Sebastian Riigo versus KRC [2015] eKLR; Fred Mudave Gogo versus G4S Security Services (K) Ltd [2014] eKLR; Catherine uma Ogello versus Kenya Literature Bureau [2013] eKLR.**

Determination

6. The Claimant filed the memorandum of claim on 18th September, 2015 representing Julius Nganga and David Macharia and the issue in dispute was registered at that of unlawful dismissal from employment with the respondent.

7. The claim is also that upon the employment of the grievant, the Respondent terminated them without any explanation and the Claimant reported a dispute with the Minister in terms of paragraph 11 of the claim. The letter reporting the dispute is also attached to the Claimant dated 4th January, 2012. A conciliator was appointed and in the meeting held between the parties, it was noted that both grievant were dismissed from their employment with the Respondent on 5th November, 2011.

8. The above facts are reiterated by the Respondent in the defence filed on 29th February, 2016 at paragraph 14. The Claimant has not made any replies thereto or filed any written submissions.

9. In **Fred Mudave Gogo**, cited above, the court held that section 90 of the Employment Act is couched in mandatory terms. A claim premised on the provisions of the Employment Act and relating to summary dismissal and the remedy of compensation must be filed with the court within the mandatory 3 years period from the time when the cause of action arose.

10. These findings are reiterated in **joseph Sebastian Ringo case**, cited above that even where a dispute is reported to the minister, the time period allowed for the same to be filed with the court do not change. Claims based on the provisions of the Employment Act must be lodged with the court within 3 years unless there is proof of a continuing injury which is not the case here.

11. Where the cause of action for the grievant arose with their dismissal on 5th November, 2011, claims should have been file don or before the lapse of 3 years, that is on 4th November, 2014. To file the claim on 18th September, 2015 was a period way outside the imitation period and thus stature barred.

12. By letter dated 20th May, 2013 and received by the Claimant on 22nd May, 2013 the minister advice the Claimant to file suit with the court. This was not done as advised until the 18th September, 2015 a period way out of time and the Claimant does not explain the reason(s) for the lapse in compliance even where the Minister's Advice came within good time and within the 3 years allowed for filing suit in terms of section 90 of the Employment Act. I therefore find the suit is time barred and cannot stand the statutory limitations on time which are mandatory under section 90 of the Employment Act.

Accordingly, objections by the Respondent vide notice dated 8th March, 2016 is with merit and hereby allowed. Suit is hereby dismissed. The Claimant failed to raise any objections and shall pay costs.

Dated and delivered in open court at Nairobi this 8th day of June, 2017.

M. MBARU

JUDGE

In the presence of:

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