

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 613 OF 2014

BERNARD JACK OWILI CLAIMANT

VERSUS

JETLAK FOODS LIMITED RESPONDENT

Claimant in person

Mr. Makori for respondent

RULING

1. The respondent has raised a preliminary objection to wit that this matter is time barred by dint of Section 90 of the Employment Act, 2007.

2. Section 90 of the Act reads;

“Notwithstanding the provisions of Section 4 (1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

3. The suit was filed on 11th April 2014, and the termination of employment that precipitated the suit was on 16th September 2013.

4. The suit was filed more than ten (10) years from the date the cause of action occurred.

5. The suit was filed without any application to file the same out of time. The Court of Appeal in **Lilian ‘S’ Vs. Caltex Oil Kenya Limited [1989] KLR 1** held;

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

6. Limitation of time goes to the jurisdiction of the court to entertain the suit. It is not a mere technicality.

7. The suit in dispute was reported to the Ministry of Labour on 23rd September 2003. There are no averments as to what transpired between then and the year 2014 when the suit was finally filed in court.

8. The suit is time barred and the court lacks jurisdiction to entertain it. The suit is dismissed with no order as to costs.

Dated and delivered at Nairobi this 28th day July, 2017.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE