



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

CAUSE NO. 1166 OF 2014

JUDD MURIGI KIARIE.....CLAIMANT

VERSUS

SBG SECURITIES LIMITED (FORMERLY KNOWN AS) CFC

STANBIC FINANCIAL SERVICES LIMITED.....RESPONDENT

Mr. Mwaki for respondents/objector

Mr. Maluti for claimant

RULING

1. The respondent filed a preliminary objection to the suit on grounds that the suit is statutorily time-barred by dint of section 90 of the employment Act, 2007.
2. Section 90 of the Act reads as follows;

“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 brought by a memorandum of claim on 2nd July 2014.
4. The cause of action as per paragraph 6 of the memorandum of claim arose on 7th September 2010 when the employment of the claimant was terminated for reasons of redundancy.
5. The claimant further avers that on or about 11th July 2011, despite declaring the position he held of Head of Research redundant, the claimant learnt that the respondent had proceeded to hire a new Head of ‘Equity’ Research, whose duties and/or job description were similar or substantially similar to the claimant’s former duties and/or job description.
6. The claimant thus became aggrieved by the conduct of the respondent hence proceeded to file this suit.
7. From the facts of the case, the cause of action arose on 11th July 2011 when the claimant discovered

that the redundancy which he had hitherto accepted was stage managed as described in the particulars of mischief, malice and/or breach.

8. The suit was thus filed within three (3) years from the date the cause of action arose and is not statutory barred.

9. In any event, if there is a dispute as to the date the cause of action arose, the objection raised is not a pure point of law and cannot in that event, which is denied, be determined at the preliminary stage. See **Mukhisa Biscuits Manufacturers Ltd. Vs. West End Distributors Ltd. [1969] E.A. 696.**

10. For these reasons, the preliminary objection is dismissed with costs in the cause.

Dated, signed and delivered at Nairobi this 25th day of August, 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE