



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 658 OF 2016

BETWEEN

BENJAMIN OTIENO NYABORO.....
CLAIMANT

VERSUS

KENYA RAILWAYS CORPORATION LTD.....
RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mutisya & Associates Advocates for the Claimant

Ndegwa Muthama Katisya & Associates Advocates for the Respondent

RULING

1. This Claim was initially filed at the Senior Principal Magistrate's Court at Mombasa, registered as Civil Suit No. 1691 of 2010.
2. It was filed on 2nd July 2010. The Claimant stated he was unlawfully and illegally dismissed by the Respondent. He did not disclose the date of dismissal. He sought orders for payment of terminal dues, costs and interest.
3. The Respondent filed its Statement of Defence on 9th September 2010.
4. The Claim was transferred to Employment & Labour Relations Court through an order of the High Court Mombasa.
5. On 15th June 2017, the Respondent filed a Notice of Preliminary Objection stating the Claim is statute-barred, under Section 4(1) of the Limitation of Actions Act Cap 22 the Laws of Kenya.
6. Parties agreed to have Preliminary Objection considered and determined on the strength of the

Pleadings, Documents and Submissions.

7. They confirmed filing of Submissions at the last mention in Court, on 24th July 2017, when the date for Ruling was scheduled.

The Court Finds:-

8. The date when the Claimant was dismissed from employment, is disclosed in Claimants' letter of dismissal. He was dismissed on 3rd April 2003.

9. His Claim was filed at the Senior Principal Magistrate's Court on the 2nd July 2010.

10. It was filed well over 6 years after dismissal. The Claimant initiated his Claim after the expiry of the 6 year time-limit, given on filing of contractual disputes, under Section 4(1) of the Limitation of Actions Act. The Claim is time-barred under statute.

11. There is adequate judicial authority on the proposition that timelines given in statutes of limitations, on filing Claims, constitute jurisdictional law, not mere procedural rules as the Claimant submits.

12. Among the celebrated decisions of the Court of Appeal of Kenya on the subject are:-

- ***Rift Valley Railways (Kenya) Ltd v. Hawkins Wagunza Musonye & another [2006] e-KLR.***
- ***Gerald Muli Kiilu v. Barclays Bank of Kenya [2016] e-KLR***

13. Relying on these decisions, the Court agrees with the Submission of the Respondent that the issue of limitation goes to the root of the Court's jurisdiction.

14. The explanation by the Claimant that he was taken through a criminal trial, over the same facts leading to his dismissal, and was only acquitted on 7th October 2008, has no effect on the date the cause of action arose.

15. The process at the workplace leading to dismissal was an administrative process. The Respondent had no obligation to wait for the finalization of the criminal process. There is nothing shown to the Court by the Claimant, which would suggest the Respondent joined its administrative process to the criminal process. He was not told the disciplinary process would depend on the criminal trial. There was no letter of employment, workplace human resource manual or by las, supplied to the Court by the Claimant requiring the Parties abide the outcome of the criminal process.

IT IS ORDERED:-

- a) The Preliminary Objection is sustained.***
- b) The Claim is dismissed in its entirety, and file closed.***
- c) No order on the costs.***

Dated and delivered at Mombasa this 29th day of September 2017.

James Rika

Judge