

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 123 OF 2017

MOSES MACHARIA MUHORO.....CLAIMANT

v

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. In a Memorandum of Claim lodged with the Court on 16 March 2017, Moses Macharia (Claimant) asserted that the Teachers Service Commission (Respondent) unlawfully terminated his employment contract on 7 December 2012.
2. Upon service, the Respondent filed a Notice of Preliminary Objection that
 - a) The Claimant's Claim herein is statutorily time barred and grossly offends the mandatory provisions of Section 90 of the Employment Act No. 11 of 2007.
3. Despite the notice being served upon the Claimant, he did not file any grounds of opposition or replying affidavit.
4. When the objection came up on 10 October 2017, the Claimant sought to delay its prosecution on the ground that a hearing notice thereto had only been served and the time between the service and hearing was too short.
5. Having failed to file grounds of opposition and/or replying affidavit, it is apparent that the Claimant was merely attempting to postpone the inevitable.
6. It cannot be disputed that the Claimant's cause of action accrued on 7 December 2012 as pleaded in the Memorandum of Claim which was filed in Court on 16 March 2017.
7. The Cause having been filed outside the 3 year period prescribed by section 90 of the Employment Act, 2007 is caught up by the law of limitation.
8. The Court therefore orders the Memorandum of Claim to be struck out with no order as to costs as the Respondent had not yet filed a substantive Response.

Delivered, dated and signed in Nakuru on this 19th day of October 2017.

Radido Stephen

Judge

Appearances

For Claimant Ms. Kipruto instructed by Mutuku Wambua & Associates, Advocates

For Respondent Ms. Ngere, Legal Officer, Teachers Service Commission

