



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 212 OF 2017

SAID JUMA ALI SAMBACLAIMANT

VERSUS

HARISH PATELRESPONDENT

RULING

IINTRODUCTION

1. On 20/3/2017, the claimant brought this suit against the respondent claiming ksh.555,0925 being salary arrears, bonus and leave and travel allowance which accrued by virtue of an alleged employment contract between him and the respondent. The said employment contract allegedly lasted for only 9 months from January 2012.

2. The respondent has denied any such employment relationship between him and the claimant and averred that if at all the claimant was employed as alleged, then the said contract was between him and disclosed Principal Minetech Service limited against whom he is free to sue for his alleged claim. In addition the respondent has filed a notice of Preliminary Objection (P.O) urging for the striking out of the suit for being time barred.

RESPONDENT'S CASE

3. The respondent has submitted that paragraph 6 of the claim pleaded that the claimant worked for the respondent for 9 months starting January 2012. In his calculation, the contract lasted upto September 2012 from which time claimant had 3 years under Section 90 of the Employment Act to file any suit founded on the said employment contract. That contrary to that provision the claimant brought this suit on 20/3/2017, more than 4 years after September 2012 when the contract ended. He therefore submitted that the suit is time barred and urged me to uphold my decision in John Mwaniki Vs G4s Security Service Limited [2012] eKLR.

CLAIMANT'S CASE

4. The claimant has opposed the preliminary objection and that the issue of time bar should not be raised as P.O. but must be dealt with as a triable issue at the hearing of the suit. He relied on Civil Appeal No. 96 of 1984 Yunes Oruta & Another VS Samuel Nyamoto to support his foregoing submissions.

5. In addition to the foregoing the claimant has opposed the P.O on ground that it is incompetent and should be struck out together with the defence because it was filed out of time and therefore time barred.

He relied on the rules of procedure of the court to urge that the defence and the P.O. are incompetent because they were filed after 21 days from the date of service of summons.

ANALYSIS AND DETERMINATION

6. The issues for determination herein is whether the suit is time barred. After careful perusal of the pleadings and the supporting witness statements and exhibits, it is clear that the suit before the court is founded on a contract of employment which ended in September 2012. The claimant is claiming benefits which allegedly accrued by virtue of the termination of the said contract in September 2012. There is no dispute that the suit was commenced on 20/3/2017, which is over 4 years from the date when the said benefits allegedly accrued to the claimant.

7. Section 90 of the Employment Act provides that:

“Notwithstanding the provision 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”

8. In view of the foregoing mandatory provision of the law, it is clear that the suit herein was filed out of time. It is therefore my holding as I did in John Mwaniki VS G4s Security Services Ltd that the suit is time barred and the court lacks jurisdiction to entertain it.

DISPOSITION

9. For the foregoing reasons, is strike out the suit with no order as to costs.

Dated, signed and delivered this 13th October 2017.

O. Makau

Judge