



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 141 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 30th November, 2017)

PATRICK MUCHOKI NJARAMBA.....CLAIMANT

-VERSUS-

FIRST COMMUNITY BANK LIMITEDRESPONDENT

RULING

1. The Application before Court is the Preliminary Objection dated 1st March 2017 filed by the Respondents on the grounds that the claim is statutory barred and that the Claimant has not obtained leave of the Court to file the suit out of time.
2. The claimant field his claim on 26th January 2017 stating that he was employed by Respondent on 1st January 2007 and was summarily dismissed on 8th October 2009 for gross misconduct.
3. The Respondent has therefore submitted that the claim is time barred and has filed submissions in that respect.
4. The Claimants on their part opposed the Preliminary Objection. They filed their submissions and they submit that time did not start running from 8th October 2009 but when Claimant was acquitted of the criminal offence.
5. I have examined the submissions of both parties. I note that the issue of time for the Employment and Relations Court is a well settled matter. Section 90 of Employment Act 2007 states 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 un less 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”.

6. It is therefore imperative that anyone willing to file a claim in relation to an employment matter should do so within 3 years from the time the cause of action arose.
7. The Claimant have submitted that the cause of action rose after the Claimant’s acquittal by the criminal Court. This is definitely not true because this Court’s jurisdiction is not subject to conclusion of any

criminal case in any other case and time will start to run notwithstanding the existence of parallel criminal proceedings or any other proceedings of a different nature.

8. The Court of Appeal has also pronounced the same in **Civil Appeal No. 6 of 2015 (Kisumu)** that this Court has no authority to extend time where time for filing suit has lapsed.

9. Based on this understanding, I find that the Preliminary Objection has merit. I find that the claim before me is time barred and is therefore dismissed accordingly. In view of the nature of the claim, I direct that each party will bear its own costs.

Read in open Court this **30th day of November, 2017.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Ochieng holding brief for Njenga for the Respondent

No appearance for Claimant