



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

CAUSE NO 1701 OF 2012

GEOFFREY KIAMA MWANGI & 32 OTHERS.....CLAIMANT

VERSUS

KARUNGURU ESTATE LIMITED.....RESPONDENT

RULING

1. This ruling relates to a preliminary objection raised by the Respondent in its Statement of Response at paragraph 2, to the effect that the claim is time barred. The Respondent also takes issue with the manner in which the Claimants obtained the summons, which was contrary to the provisions of Order 5 of the Civil Procedure Rules.

2. The Respondent's objection is based on Section 90 of the Employment Act, 2007 which provides as follows:

90. 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 pleadings and supporting documents filed in court however reveal that the cause of action herein arose before enactment of the Employment Act, 2007. The Court was referred to the decision in ***Fred Mudave Gogo v G4s Security Services (K) Ltd [2014] eKLR*** where it was held that the Employment Act, 2007 does not have retrospective application.

4. I think this is the correct legal position. It therefore follows that the limitation law applicable to the Claimants' case is the Limitation of Actions Act, which caps the limitation period at six (6) years. Moreover, the actual date when the Claimants left employment is an issue in contention. This is borne by the pleadings by the parties.

5. A preliminary objection was defined in ***Mukisa Biscuit Manufacturers Ltd v Westend Distributors Ltd [1969] E.A, 696*** as follows:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

6. Having found that the accrual date in this case is in contention, it follows that the issue of limitation of

time does not lend itself to determination *in limine*. I must however add that this issue will remain live throughout the trial and may even be raised in final submissions.

7. Regarding the manner in which the summons were taken out, the only thing I will say is that while the procedural rules are important for the orderly management of litigation processes, their breach should not be used to invalidate an otherwise legitimate claim. In my view, a procedural lapse under Order 5 of the Civil Procedural Rules is curable under Article 159 of the Constitution.

8. In the end, the Preliminary Objection raised by the Respondent is overruled with costs in the cause.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 10TH DAY OF NOVEMBER 2017

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JUDGE

Appearance:

Mr. Enonda for the Claimants

Mr. Munene for the Respondent