

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 130 OF 2014

KARIM BOGHA (Suing as the Administrator and
personal representative of the estate of

SALIM PREMJI VIRJEE.....CLAIMANT

VERSUS

ELYS CHEMICAL INDUSTRIES LIMITED.....RESPONDENT

RULING

1. The respondent herein raised in limine, the objection that the claim herein having been filed after lapse of three years the same is statutbarred hence should be dismissed.
2. According to the respondent, the claimant pleaded that he was employed by the respondent as a sales manager from 15th May, 1992 and worked until 2nd July 2008 when the respondent wrongfully dismissed him. To this extent the respondent contends section 90 of the employment Act cap 226 forbids the filing of any suit after the lapse of 3 years from the accrual of the cause of action.
3. Objection as to limitation of action goes to the jurisdiction of the court. The issue must therefore be decided upon before the court can proceed with the matter. It is correct that section 90 of the Employment Act, 2007 forbids the filing of any claim based on the Act or contract of employment generally after the lapse of three years after the accrual of the cause of action or in case of continuity injury, within twelve months after cessation thereof. The Act further makes no provision for extension of time once the period provided for has lapsed.
4. The Employment Act, 2007 came into force on 2nd June, 2008 exactly a month before the claimant's services were allegedly terminated. The claim herein was filed on 5th February, 2014 which was obviously outside the time prescribed by section 90 of the Act.
5. The Act unfortunately makes no provision for extension of time no matter how excusable the delay is. Unless the law is amended to permit extension of time in merited cases, the court's hands are tied.
6. The claim is therefore found to have been filed out of time with the consequence that the same is hereby dismissed with no order as to costs.
7. It is so ordered.

Dated at Nairobi this 10th day of November 2017

Abuodha J. N.

Judge

Delivered this 10th day of November 2017

Abuodha J. N.

Judge