



REPUBLIC OF KENYA



KENYA LAW
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**Sunyai v Judicial Service Commission & another (Cause 314 of 2015)
[2017] KEELRC 107 (KLR) (2 November 2017) (Ruling)**

Justine S. Sunyai v Judicial Service Commission & another [2017] eKLR

Neutral citation: [2017] KEELRC 107 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE 314 OF 2015

MA ONYANGO, J

NOVEMBER 2, 2017

BETWEEN

JUSTINE S SUNYAI CLAIMANT

AND

JUDICIAL SERVICE COMMISSION 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. By notice of preliminary objection dated 17th June 2016 the 1st respondent raises objection that:
 1. That the claim is statute time-barred and is incompetent, fatally defective and an abuse of court process as the same offends provisions of section 90 of the Employment Act, 2007 Laws of Kenya.
2. On 26th 2016 when the notice of preliminary objection was set for hearing parties sought and were granted leave to argue the same by way of written submissions. The 1st Respondent filed submissions on 1st December 2016. Neither the claimant nor the 2nd respondent filed submissions.
3. In the submissions of the 1st respondent it is stated that the claimant filed this suit on 19th August 2015 seeking judgment against the respondents jointly and severally for –
 - a) The termination and/or dismissal of the claimant be declared unlawful from the beginning.
 - b) The claimant to be paid his termination benefits as follows:-
 - (i) Service of gratuity for 3[three] years $25 \times 3 \times 12,611 = 945,825$
 - (ii) 12 months compensation for loss of employment $\text{Kshs. } 12,611 \times 12 = 151,332/-$



- c) Reinstatement of services.
 - d) General Damages thereof.
 - e) Costs of the claim.
 - f) Interest of the above at court rates.
4. The 1st Respondent submits that the claim is time barred and incompetent as it offends the provisions of the Employment Act as the termination occurred on 14th June 2012.
- Copy para 7 to 13 of 1st respondent's submissions.

Determination

5. It is not clear whether the failure of the claimant to file written submissions herein is an indication of an admission of the grounds of preliminary objection or it was a matter of inadvertence.
6. The law relating to limitation is contained in the Limitation of Actions Act which provides at section 4 as follows:
- 4. Actions of contract and tort and certain other actions
 - (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—
 - (a) actions founded on contract;
 - (b) actions to enforce a recognizance;
 - (c) actions to enforce an award;
 - (d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
 - (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
 - (2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:
 - Provided that an action for libel or slander may not be brought after the end of twelve months from such date.
 - (3) An action for an account may not be brought in respect of any matter which arose more than six years before the commencement of the action.
 - (4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.



- (5) An action to recover any penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of a written law may not be brought after the end of two years from the date on which the cause of action accrued.
- (6) This section does not apply to a cause of action within the Admiralty jurisdiction of the court which is enforceable in rem, except that subsection (1) of this section applies to an action to recover seamen's wages.

7. Section 90 of the [Employment Act](#) provides for limitation period for claims under the [Act](#) that:

90. Limitations

Notwithstanding the provisions of section 4(1) of the [Limitation of Actions Act](#) (Cap. 22), 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.

It is pleaded at paragraph 5 of the memorandum of claim herein that:

That on 17/01/2012 the 1st Respondent unlawfully terminated services of the Claimant herein without according the Claimant an opportunity to defend himself as per the requirements of the [Employment Act](#) cap 226 laws of Kenya.

9. The suit having been filed on 19th August 2015 was more than 3 years from the date the cause of action arose on 17th January 2012. The period of 3 years lapsed on 16th January 2015. The effect of the provisions of section 4 of the [Limitation of Actions Act](#) and section 90 of the [Employment Act](#) is that this court has no jurisdiction to entertain a suit that is time barred. In *Re The Matter of the Interim Independent Electoral Commission S.C. Constitutional Application No. 2 of 2011*; [2011] eKLR and in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* S.C Application No. 2 of 2012 [2012] eKLR the Supreme Court stated that jurisdiction is a matter regulated by the Constitution, statute law and judicial precedent. And as was stated in [Owners of the Motor Vessel 'Lilian S' v Caltex Oil \(Kenya\) Limited](#) [1989] KLR 1 jurisdiction is everything and without it a court has no power to make one more step.
10. In the case of [Peter Nyamai & 3 Others v M. J. Clarke Limited](#) that has been relied upon by the 1st respondent the court held that this court has no jurisdiction to extend limitation period. The court relied on the decision of the Court of Appeal in *Divecon v Samani* and the High Court decision in [Timothy M. Mukalo v Reuben Alubale Shiramba & 3 Others](#). Again in the case of [Charles Musa Kweyu v Wananchi Marine products](#) and in [Augustine Odhiambo Abiero v K.K. Security Ltd](#) the court held that a suit that is time barred is incompetent and bad in law.
11. For the foregoing reasons the preliminary objection is allowed and I consequently strike out this suit for being time barred under section 90 of the [Employment Act](#).

JUDGEMENT DATED, SIGNED AND DELIVERED THIS 2ND DAY OF NOVEMBER, 2017

MAUREEN ONYANGO

JUDGE

