

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

CAUSE NO. 360 OF 2015

LINGOLN OTAKWA M'MELI CLAIMANT

VERSUS

MARS SECURITY GUARDS LIMITED..... RESPONDENT

RULING

1. This suit was brought vide a memorandum of claim dated 11th March 2015 and filed on the same date. From the memorandum of claim, it is apparent that the cause of action arose on 22nd September 2004 when the employment of the claimant was terminated by the respondent.
2. The dispute was reported to the Minister for Labour for conciliation on 14th September 2011 and recommendation to settle the matter was made by the conciliator.
3. The claimant wrote a letter dated 23rd September 2004 disagreeing with the decision of the conciliator.
4. The respondent states that the claimant was duly paid as per the recommendation of the labour officer and that this suit is without basis and same be dismissed.
5. On 13th May 2015, the respondent filed a notice of preliminary objection to the effect that the claim is time barred by virtue of section 90 of the Employment Act and therefore should be struck out.
6. It is apparent that the cause of action arose on 22nd September 2004 and the same was filed on 11th March 2015, about ten (10) years later.
7. The law applicable to this matter regarding limitation is section 4(1) of the Limitation of Actions Act, cap. 22 of the laws of Kenya. In terms thereof, no suit based on contract may be filed after six years have lapsed.
8. The plaintiff, filed this suit out of time without leave of court. The court however notes that the Court of Appeal in the case of Devicon, reaffirmed the position, which is now trite law that no suit based on contract may be filed after six years have elapsed. That, no court is permitted to extend time within which to file a suit based on contract in terms of section 14(1) of the Limitation of Actions Act Cap 22 of the laws of Kenya.
9. That questions of limitation go to the jurisdiction of the court to entertain the matter. Accordingly, this court lacks jurisdiction to entertain this suit having been filed about ten (10) years after the cause of action arose.
10. The suit is therefore struck off with costs to the respondent.

Dated and Delivered at Nairobi this 22nd day of January 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE