



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAKURU**

**CAUSE NO. 220 OF 2015**

**CAREN AWINO OUKO.....CLAIMANT**

**v**

**VETERINARY GOLF SPORTS CLUB.....RESPONDENT**

**RULING**

1. In a Memorandum of Claim filed in Court on 27 July 2015, Caren Awino Ouko (Claimant) pleaded that

5. That the Claimant worked for the Respondent since 1995 up to 27<sup>th</sup> October 2010 when her employer allegedly sent her on a forced early retirement after working for them for 13 years.

2. When served, the Respondent filed a Notice of Preliminary Objection on 24 August 2015 to the effect that

(1) the claim is a nullity in law and fatally defective hence should be struck out with costs to the Respondent.

(2) the claim is statute bared and instituted contrary to express provisions of the law hence should be struck out with costs to the Respondent.

(3) the claim ought to have been filed at the Industrial Court Nairobi where the alleged cause of action arose.

3. The objection was taken on 21 January 2016.

4. Without going into any in-depth examination, it is clear that the Claimant moved Court after about 5 years after the cause of action accrued and this was more than the 3 years allowed under section 90 of the Employment Act, 2007.

5. That the claim presented before Court is statute barred is beyond debate.

6. Unfortunate though the case is, the hands of the Court are tied as the Court has no power, even if an application to extend time were to be preferred to extend time or grant leave to commence suit out of time

or to have the Cause herein admitted out of time.

7. The Court can do no better than refer to the decision of the Court of Appeal in *Divecon v Samani* (1995-1998) 2 EA 48 that

*to us, the meaning of the wording of section 4(1) .....is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action.....A perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that “the wording of section 4(1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked”.* (emphasis mine)

8. I would wholly adopt the legal position adverted to by the Court of Appeal, save that I would substitute the 6 years with the 3 years now outlined in the Employment Act, 2007. No Court has the power to extend time in contractual claims or jurisdiction to entertain such claims.

9. The preliminary objection by the Respondent is thus upheld with the result that the Court orders that the Memorandum of Claim filed in Court on 27 July 2015 is struck out.

10. But the Respondent being fully aware of the reasons that led to the separation may consider on humanitarian grounds to pay the Claimant the dues it promised her to enable her continue receiving medical attention. The separation was not due to any misconduct or poor performance on the part of the Claimant but due to her medical condition. But that, the Court leaves to the Respondent's conscience.

11. No order as to costs.

**Delivered, dated and signed in Nakuru on this 26<sup>th</sup> day of February 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mrs. Ndeda instructed by Ndeda & Associates

For Respondent Mr. Korongo instructed by Nyangoro & Co. Advocates

Court Assistant Nixon