



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 417 OF 2014

CYRUS WATHAKA WACHIRA.....CLAIMANT

VS

EQUITY BANK LIMITED.....RESPONDENT

RULING

1. This Ruling proceeds from the Respondent's application brought by Notice of Motion dated 13th November and filed in Court on 18th November 2015. The application, which is supported by the affidavit of Florence Njuguna sworn on 13th November 2015 seeks orders to strike out the Claimant's claim filed in Court on 19th March 2014 on the ground that it is statute barred by dint of Section 90 of the Employment Act, 2007.

2. In her supporting affidavit, Njuguna depones that the Claimant was employed by the Respondent on 5th July 2007, in the position of Accounts Assistant. He was summarily dismissed on 22nd February 2010.

3. The Claimant's reply is contained in his own affidavit by which he depones that at the time he was dismissed, he was facing criminal proceedings in Criminal Case No 983 of 2010.

4. The Claimant states that he could not file a claim in this Court before conclusion of the criminal trial. He takes the view that time did not begin to run as long as the criminal case was pending.

5. Additionally, the Claimant points out that by letter dated 1st April 2014, the Respondent tabulated what it considered as the Claimant's entitlement and this therefore marked the date when time began to run.

6. The issue for determination in this application is whether the Claimant's claim is statute barred by dint of Section 90 of the Employment Act, 2007. This Section provides as follows:

“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 after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

7. The Claimant was dismissed on 22nd February 2010 and in the normal scheme of things time would have run out against him on 21st February 2013. However, on 1st April 2014, the Respondent wrote to him acknowledging that it owed him final dues in the sum of Kshs.59,044.89. In my view, this put the

Claimant's claim within the cover of Section 23(3) of the Limitation of Actions Act which provides for fresh accrual of right of action on acknowledgement of claim. Time therefore began to run afresh on 1st April 2014 meaning that his claim was well within time.

8. The result is that the Claimant's claim is properly before the Court and the Respondent's application fails and is dismissed with costs to the Claimant.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF MARCH 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Njoroge for the Claimant

Mr. Kimondo for the Respondent