



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 336 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 15th March, 2016)

JOHNSON N. KONGACLAIMANT

VERSUS

MOI UNIVERSITY RESPONDENT

RULING

1. The Preliminary Objection before Court has been raised by the Respondent on the following grounds:
 1. *The Claimant's suit offends the Provisions of Section 4(1) of the Limitation of Actions Act and thus is statute bared and fatally defective.*
2. *The claim offends the Provisions of Section 4(4) of the Trade Disputes Act Cap 234 Laws of Kenya (now repealed).*
3. *The suit offends the Provisions of Section 90 of Employment Act and thus is statute barred and fatally defective.*
4. *The claim was filed on 6th March 2015 without leave of Court having been sought more than 23 years after the termination of the Claimant's employment and is thus incompetent.*
2. The Respondent on the other hand opposed this Preliminary Objection. He filed his submissions on 14/1/2016 in person and contends that he worked for the Respondents diligently until 1992 November when clashes broke out and many people were displaced. The claimant reported back on duty in June 1993 but was not allowed to resume his normal duties.
3. The Respondent avers that the Applicants kept him in limbo and never paid him salary. He also contends he was underpaid during the said period and was never issued with a certificate of service.
4. The Claimant didn't address the issues raised in the Preliminary Objection *per se*. He went straight to arguing his case.
5. I have looked at pleadings filed herein. I note that the Claimant states that he was terminated in 1992 when there were tribal clashes. This means that the cause of action occurred in 1992. He

filed this claim on 5.3.2015; 23 years later and without seeking leave of this Court. In any case, this claim arose during the dispensation of the repealed labour laws which envisaged that a claim of termination of this nature would first be handled by Labour Office.

6. Section 4(4) of Cap 234 – Trade Disputes Act states as follows:

“Any trade dispute involving the dismissal of an employee on the termination of a contract of employment shall be reported to the Minister within twenty eight days of the dismissal or termination of employment”.

7. The Claimant never reported this dispute. As provided for under Section 4(1) of Cap 22 – this claim being founded on contract should have been filed within 6 years.

8. I do find that the Preliminary Objection has merit. I find the claim time barred and I dismiss it accordingly.

9. Each party will bear their costs.

Read in open Court this 15th day of March, 2016

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant – present in person

Miss Kanyori holding brief for Oyombe for Respondent- Present