



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO 1088 OF 2014

GERORGE MWANGI KARUGA.....CLAIMANT

Versus

NAIROBI CITY WATER &

SEWERAGE COMPANY LTD.....1ST RESPONDENT

NAIROBI CITY COUNTY.....2ND RESPONDENT

Mr. Kigata for 1st Respondent/Objector

Mr. F.N. Kimani for Claimant

RULING

1. The suit was commenced by a Statement of Claim filed on 30th June, 2014.
2. The Respondent filed a Memorandum of Reply to the Statement of Claim in which under paragraph 14(1), the 1st Respondent raises a Preliminary Objection to wit that the suit is time barred by dint of Section 90 of the Employment Act, 2007.
3. The facts of the case as pleaded in the Memorandum of Claim is that the Claimant was suspended from the employment of the Respondent on 28th March, 2002 pending the hearing and determination of a criminal case against him. The Claimant was reinstated to his employment with effect from 21st June, 2011 and worked for the Respondent as an Accounts Assistant until August, 2013 when the Claimant retired.
4. The Claimant seeks payment of Ksh.9,692,207 being accrued salaries, benefits, allowances and service pay for the period he was under suspension.
5. It is apparent the cause of action arose on 21st July, 2011, one month after the Claimant was reinstated to his job on 21st June, 2011, when he expected to be paid arrear salaries, benefits, allowances and service pay for the period he was under suspension.
6. The suit was filed on 30th June, 2014 about two years and eleven months from the date the cause of action arose.

7. The issue of time limit does not arise at all, the suit having been filed within three years after the cause of action arose.
8. The Respondent in its Memorandum of Reply has produced a letter of reinstatement dated 9th June, 2011 which states that the Claimant was to be reinstated to the employment of the Respondent from the date of the letter. The letter further states that the period that the Claimant was away was to be treated as unpaid leave and the company will not pay for the same.
9. The letter states further that the Claimant would only be reinstated into the payroll when he reports on duty and a POR raised by the Finance Manager.
10. This vindicates the court's position as to when the cause of action arose which was at least, one month from the date the Claimant was reinstated and the Respondent declined to pay arrear remuneration from the date of suspension. Any disputes of facts cannot be dealt with at this preliminary stage.
11. The Preliminary Objection lacks merit and the same is not upheld.
12. Costs in the cause.

Dated and delivered in Nairobi this 1st day of April, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE