

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 96 OF 2015

JOHN MURIUNGI MBOGORI..... CLAIMANT

VERSUS

DEL MONTE LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 27th May, 2016)

RULING

The claimant filed the memorandum of claim on 05.06.2015 through Shem Kebongo & Company Advocates.

The claimant prayed for severance pay, salary in lieu of termination notice, leave allowance, holidays, overtime, costs of the suit, gratuity, long term service pay, interest, certificate of service and any other relief the honourable court deems fit to grant. At paragraph 7 of the memorandum of claim the claimant has stated that on or around 1.07.2007 he was wrongfully dismissed or terminated allegedly for being in possession of the stolen 20 litre jerry can of diesel.

The response to the claim was filed on 14.07.2015 through Dola, Magani & Company Advocates. The respondent prayed that the claim be dismissed with costs to the respondent. At paragraph 12 the respondent pleaded that the claim as framed was incompetent and was barred by Limitation of Actions Act, Cap. 22 Laws of Kenya and that a preliminary objection would be raised at the hearing.

The respondent, accordingly, filed a notice of preliminary objection on 12.11.2015 that the court lacked jurisdiction to hear and determine the suit.

In submissions filed on 13.05.2016, the claimant has submitted that the court should look at the greater justice because under Article 159 (2) (d) of the Constitution of Kenya, 2010, the court is guided by the principle that justice shall be administered without undue regard to procedural technicalities.

The court finds that time of limitation for filing a suit is a substantive issue going to the roots of the jurisdiction of the court and it is not a procedural technicality as urged for the claimant. In this case, the six years time of limitation prescribed (at the material time of the cause of action) for filing suits based on the contract of employment as per section 4 of the Limitation of Actions Act, Cap. 22 Laws of Kenya had long lapsed by the time the claimant filed the suit.

The court returns that the suit was indeed time barred and the preliminary objection is hereby upheld.

In conclusion, the claimant's memorandum of claim filed on 05.06.2015 is hereby dismissed with costs.

Signed, dated and delivered in court at Nyeri this **Friday, 27th May, 2016.**

BYRAM ONGAYA

JUDGE