



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 13 OF 2016

DENNIS NYAOKO MOGENI.....CLAIMANT

VERSUS

EQUITY BANK LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 6th May, 2016)

RULING

The claimant filed on 25.01.2016 the memorandum of claim through Warutere & Associates praying for compensation for unfair termination, a month's pay in lieu of the termination notice, accrued annual leave, and leave travel allowance all summing up to Kshs. 439, 000.00.

The respondent filed on 22.03.2016 the response to the memorandum of claim through Wahome Gikonyo & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs. The memorandum of response stated as follows at paragraphs 4 and 11, thus,

“4. The respondent further contends that this suit is a gross abuse of the process of the court and grossly incompetent, the claimant having filed Nairobi Industrial Court Case No. 1543 of 2012, and hereby gives notice that it shall also raise a preliminary objection on this ground.

11. The respondent contends that the claimant's suit is misconceived, incompetent, bad in law, discloses no reasonable cause of action, frivolous, vexatious, statutory barred, a gross abuse of the process of the Court and hereby gives notice that it shall raise a preliminary objection to the same on all these grounds.”

This is the ruling on the preliminary objections, the parties having filed their respective submissions in view of the objections.

The **1st issue** for determination is whether the suit is *res judicata*. *Res-Judicata* is an affirmative defence barring the same parties from litigating a second law suit on the same claim or any other claim arising from the same transaction or series of transactions and that could have been, but was not raised in the first suit (See Black's Law Dictionary, 9th Edition). The three essential elements are:

- (a) an earlier decision on the issue;
- (b) a final judgment on the merits; and
- (c) the involvement of the same parties, or parties in privities with the original parties.

The doctrine of *res judicata* aims at ensuring that litigation comes to an end. An issue that has been conclusively decided upon by a competent judicial authority must not find itself before the same or other competent judicial authority for reconsideration.

The respondent has submitted that the present suit is *res judicata* in view of the judgment delivered on 21.11.2014 between **David Nyaga Ireri –Versus- Equity Bank Limited, Cause No. 59 of 2014 at Nyeri, formerly Cause No. 1543 of 2012 at Nairobi**. The court finds that the claimant was not a party to the judgment delivered in the earlier suit and had no privity to any of the parties and therefore, the court returns that the present suit is not an abuse of court process on account of *res judicata*. The court returns that indeed, there is no previous judgment on merits on the matters in dispute in the present suit.

The **2nd issue** for determination is whether the suit is time barred. At paragraph 6 of the memorandum of claim, the claimant has pleaded that he received a letter of dismissal dated 26.03.2010. The certificate of service shows that the claimant was the respondent's employee from 28.07.2008 to 26.03.2010. It is therefore clear that the claimant was dismissed by the letter of 26.03.2010. The suit was filed on 25.01.2016. The respondent's submissions are that the suit was filed outside the 3 years of limitation as prescribed in section 90 of the Employment Act, 2007 so that it was time barred under the section. The respondent's submission in that regard is unopposed as the facts are as stated for the respondent. Accordingly the court returns that the suit was time barred and the preliminary objection is upheld in that regard.

In conclusion the preliminary objection founded upon the suit being time barred is allowed and the claimant's memorandum of claim filed on, and, dated 25.01.2016, is hereby dismissed with costs.

Signed, dated and delivered in court at Nyeri this **Friday, 6th May, 2016**.

BYRAM ONGAYA

JUDGE