



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 82 OF 2014**

**GEORGE MUNGAI**

**CLAIMANT**

**v**

**TRUSTEES, LIONS CLUB OF NAKURU SCHOOL**

**RESPONDENT**

**JUDGMENT**

1. George Mungai (Claimant) in Memorandum of Claim lodged in Court on 2 April 2014 against the Trustees, Lions Club of Nakuru, School (Respondent) alleged unlawful dismissal.
2. The Respondent filed a Reply to Statement of Claim on 21 May 2014 and the Cause was heard on 23 November 2015 when the Claimant's case was closed.
3. The Respondent's case was fixed for 16 February 2015, but the Respondent and its advocate did not turn up. The Court therefore ordered the Respondent's case closed.
4. The Claimant filed his submissions on 2 March 2016 while the Respondent filed its submissions on 3 March 2016.
5. The Court has considered the pleadings, testimony and the submissions.

**The evidence**

6. The Claimant was employed by the Respondent as a teacher in 1988 and served until 14 January 2009, when he was served with a dismissal letter delivered by a messenger.
7. The reason given for the summary dismissal was *unethical practices*.
8. The Claimant in his testimony assailed the summary dismissal as being unfair because he was not afforded an opportunity to be heard before the dismissal, and that his attempts to get explanations from the Chairman of the Respondent were unsuccessful.
9. He also testified that he was not given notice and that at time of dismissal he was earning Kshs 21,970/-.
10. In cross examination, the Claimant admitted that he was dismissed in 2009 and that he instituted legal proceedings against the dismissal in 2014.
11. The issues arising for determination, in the view of the Court are, *whether the cause of action is statute barred, whether the dismissal of the Claimant was unfair and appropriate remedies.*

**Whether cause of action is statute barred**

12. A determination of this issue may unravel the whole claim one way or the other and although the Respondent did not raise it in its pleadings, it was raised in the course of taking oral testimony.
13. In any case, limitation goes to jurisdiction, and a Court can on its own motion examine it.
14. From the Memorandum of Claim, it is not in dispute that the legal injury/actionable wrong complained of occurred on 14 January 2009.
15. In terms of section 90 of the Employment Act, 2007, a cause of action arising out of a contract of

- service ought to be instituted within 3 years from the date of accrual.
16. The instant action was commenced on 2 April 2014, some 5 years after the legal injury complained of.
  17. Clearly, that was outside the period prescribed under section 90 of the Employment Act, 2007.
  18. The cause of action herein is statute barred in terms of section 90 of the Employment Act, 2007, and therefore the Court has no jurisdiction to entertain it in light of the legal principles set out by the Court of Appeal in *Divecon v Samani* (1995-1998) 1 EA 48.
  19. Considering the conclusion in the preceding paragraph, it would be an academic exercise to examine the other issues arising for determination.
  20. The Court therefore orders the Memorandum of Claim struck out with no order as to costs.

**Delivered, dated and signed in Nakuru on this 3<sup>rd</sup> day of May 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant	Mr. Maina instructed by Ikua Mwangi & Co. Advocates
For Respondent	Mr. Kimatta instructed by Kimatta & Co. Advocates
Court Assistant	Nixon