



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2018 OF 2015**

**(Before Hon. Justice Hellen S. Wasilwa on 30<sup>th</sup> June, 2016)**

**DUNCAN OUMA ABOKA.....CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION .....RESPONDENT**

**RULING**

1. Before the Court is Preliminary Objection dated 4<sup>th</sup> January 2016 where the Respondent prays that:
  1. ***The claim is time barred and grossly offends the mandatory provisions of Section 90 of the Employment Act No 11 of 2007 and should therefore be struck out with costs to the Respondent.***
  2. ***The Court has no jurisdiction to hear and determine this claim on grounds that the claim is filed out of time and is statute barred.***

**Background:**

2. The suit herein was instituted via a statement of claim filed on 12<sup>th</sup> of November 2015. The Claimant herein is a teacher who was issued with a letter of interdiction on the 19<sup>th</sup> of July 2010 on allegations of immoral behaviour with a minor student. A disciplinary process ensued and on August 2010, the Respondent wrote to the Claimant informing him of his removal from the Register of Teachers on the said allegations.
3. The allegations were subject to criminal proceedings before the Senior Principle Magistrate in Rongo where the Claimant was acquitted for lack of evidence. The Claimant then sought reinstatement in October of 2013, and was recommended for reinstatement by officers of the Respondent but the Respondent has since failed to reinstate him.
4. The Claimant has now come to Court seeking compensation on various failures by the Respondent to reinstate and remunerate him.
5. From the pleadings on the file, the Claimant was dismissed by the Respondent's letter dated 31.8.2010 and also removed from the Register of Teachers. It is my view that, that is when the cause of action arose.

6. Under Section 90 of Employment Act 2007:

***“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof”.***

7. The Claimant should have filed his claim within 3 years which in this case ended on 31.8.2013.

8. This claim was however instituted on 12.11.2015 and without the Claimant seeking leave of the Court to do so. It is my finding that the claim is time barred and this Court lacks jurisdiction to entertain it.

9. The Preliminary objection is therefore allowed and this claim is dismissed for being time barred.

**Read in open Court this 30<sup>th</sup> day of June, 2016.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kalwahi holding brief for Ayuol for Respondent – Present

Claimant– Absent