



REPUBLIC OF KENYA

IN THE EMPLOYMENT LABOUR AND RELATIONS COURT

AT MOMBASA

CAUSE 29 OF 2016

BENSON MAINA A.K. MIGWI.....CLAIMANT

KENYA PORTS AUTHORITY.....RESPONDENT

RULING

Introduction

1. The Claimant brought this Suit on 27.1.2016 Claiming terminal dues plus compensation of his employment on 4.4.1994. The Respondent denied liability for the alleged unfair termination and avers that the Claimant forfeited his appointment when he absented himself from work for a continuous period of 10 days without leave from 1.4.1997. That she notified the Claimant of his forfeiture through his last known address. In addition the Respondent objected to the jurisdiction of the Court to entertain the Suit on ground that it is time barred.

2. The Preliminary Objection (P.O.) was argued on 13.6.2016 between Mrs. Ikegu Advocate for the Respondent and the Claimant who was not represented by Counsel.

Submissions

3. It was submitted for the Respondent that the Claimant was served with a letter of forfeiture of appointment dated 26.5.1997. The reason was that the Claimant absented himself from work without leave for more than 10 days. That he appealed against the forfeiture on 7.8.2000 but the same was declined by letter dated 16.8.2000. That since the contract was terminated in 1997, the law regulating time then was the Limitation of Action Act Cap 22 of the laws of Kenya. That section 4 of the said Act limited the time within which to bring claims founded on employment contract to 6 years from the date it arose. That the cause of actions herein arose on 26.5.1997 and expired on 26.5.2003. That the Suit herein having been filed on 28.1.2016, it was brought 13 years outside the statutory limitation period and as such the court lacks jurisdiction and the discretion to entertain the Suit. The Court was therefore urged to strike the Suit with costs.

4. In response, the Claimant submitted that he was dismissed while serving a prison sentence. That when he was released on 8.4.1997, he immediately appealed against the dismissal and prayed for reinstatement to his employment. That the appeal was rejected and he was told that he should wait until he reaches 50 years before returning to collect his dues. That on reaching 50 years, he went for his dues from the Respondent but although he had worked for 15 years, he was only paid NSSF for 5 years only.

Analysis and Determination

5. There is no dispute that the Claimant was employed by the Respondent from 1984 to 1997 when he was dismissed from employment on ground of forfeiture of appointment through continuous absence from work without leave for over 10 days. The issues for determination are whether the Suit is time barred and the court lacks jurisdiction to determine it.

Time Bar

6. As correctly submitted by the Respondent, the cause of action arose on 26.5.1997 and the Suit was filed on 28.1.2016. The time span between the two events was 19 years. Under section 4(1) of the Limitation of Actions Act, the time allowed for one to bring a Claim founded on employment contract under the Employment Act inforce until June 2008, was 6 years. From 26.5.1997 6 years lapsed on 26.5.2003. Consequently the time taken to bring the Suit was therefore 13 years outside the Statutory Limitation period.

Jurisdiction

7. In view of the finding herein above that Suit is time barred, the Court makes a finding that it lacks Jurisdiction to entertain the same. The expiry of the limitation period set by the law extinguishes the jurisdiction of the court over the dispute in that cause of action. Consequently, this court must down its tools forthwith.

Disposition

8. The P.O. is upheld and the Suit struck out with no order as to costs.

Signed, Dated and Delivered at Mombasa this 24th day of June 2016.

ONESMUS MAKAU

JUDGE