



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

CAUSE NO. 1932 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 20th June, 2016)

DAVID GACHATHI THUO..... CLAIMANT

VERSUS

POSTAL CORPORATION OF KENYA RESPONDENT

RULING

1. This ruling is on a Preliminary Objection raised by the Respondent via Notice dated 5th April 2016. The substance of the objection is as follows:
 1. ***That this Honorable Court lacks jurisdiction to hear and determine this matter by virtue of Section 47 and 90 of the Employment Act, 2007 as it is time barred.***
 2. ***That the Claim is bad in law and an abuse of the Court process and ought to be struck out with costs to the Respondent.***
2. The Claimant has filed a response via a Replying Affidavit dated 3rd May 2016 and dated 6th May 2016; he depones:

“That the Memorandum of Claim is dated 31st August 2015 but that it was filed within the time limitations imposed by the Employment Act & Limitations of Actions Act”.
3. They have also raised issues of gross violation of his rights under Article 27, 28, and 29 of the Constitution and that there is no time limitation for the enforcement of fundamental rights and freedoms. He reiterates that the Respondent has victimized, intimidated, harassed, and suspended him without pay and refused to give him a fair hearing yet the allegations that had been meted against him were false and he got an acquittal.
4. He avers that in the response to the memorandum filed by the Respondent, the issue of time barred has not been raised. Moreover, it is after his acquittal that he made the effort to have the issue of his dismissal resolved amicably but the Respondent declined to do so.
5. The Respondent submitted that the Claimant herein was dismissed on the 31.08.2012 and the claim was filed on the 30.10.2015 which is more than three years after the cause of action arose.
6. They submit that the Claimant’s issue of his acquittal does not apply in this instance and does not in any way affect the limitations of actions clause.

7. The Culminant submitted that after his dismissal he lodged an appeal where he was told that his matter could not be heard until the criminal case brought against him was heard and determined. Upon determination, the Court agreed that the allegations against him were a conspiracy to conceal rot within the corporation, the Claimant wrote to the Respondent inquiring of the fate of his appeal in view of his acquittal.
8. They pray that the objection be dismissed with costs.
9. The issue for determination is whether this matter is time barred.
10. Section 90 of Employment Act states as follows:

“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”.
11. The Claimant avers that he was dismissed by the Respondent on 31.8.2012 but that he appealed the dismissal. The appeal had been tonged on 4.10.2012 (DGT. 7).
12. There was a hearing of this appeal on November 2012 and it was decided that the appeal abide the criminal proceedings which were completed and Appendix DGT 10 is a copy of judgment dated 23.10.2014 when Claimant wrote to Respondent on 14.1.2015 (DG 10) on the criminal proceedings. The Respondent replied vide DGT 11 on 19.6.2015 communicating the decision of the appeal.
13. It is this Court’s finding that as the appeal had not been determined, the cause of action started to rein when a decision was made on the Claimant’s appeal on 19.6.2015. This claim was filed on 30.10.2015 and therefore in line with Section 90 of Employment Act above.
14. I find that the Preliminary Objection has no merit and I therefore dismiss it accordingly.

Read in open Court this 20th day of June, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wandeto for Claimant Respondent

No appearance for Applicant