



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 283 OF 2015**

**BENNET OUMA OYUGA**

**CLAIMANT**

v

**GILANIS SUPERMARKET LIMITED**

**RESPONDENT**

**RULING**

1. The Claimant commenced legal proceedings against the Respondent on 7 October 2015 alleging unlawful termination of employment. The date of the unlawful termination of employment was pleaded as 9 April 2011.
2. In a Response filed in Court on 30 October 2015, the Respondent raised a preliminary objection to the effect that the cause of action was statute barred.
3. When the Cause was called out for hearing on 12 July 2016, the parties agreed to argue the preliminary objection first.
4. The Court has considered the oral submissions made in respect of the preliminary objection.
5. That the Memorandum of Claim was filed outside the 3 year window provided by section 90 of the Employment Act, 2007 is not in dispute.
6. In fact, the Claimant's advocate conceded that the cause of action was statute barred.
7. But he sought to have the Memorandum of Claim withdrawn with no order as to costs instead of being struck out with costs as sought by the Respondent.
8. The Claimant was put on notice way back in 2015 when the Response was filed and served that the Respondent was going to raise the question of limitation, but he went ahead and had the Cause set down for hearing without bothering to seek directions on the determination of the preliminary objection in the first instance.
9. He could have sought to withdraw the Cause much earlier, given the fact that the law on limitation in causes of unfair termination of employment has been settled for some time now.
10. In this regard, the Claimant ought to meet the Respondent's costs.
11. The Court finds and holds that the cause of action having been filed outside the prescribed time should be struck out with costs to the Respondent. It is so ordered.

**Delivered, dated and signed in Nakuru on this 29<sup>th</sup> day of July 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant

Mr. Onyancha instructed by B.M. Nyaribo & Co. Advocates

For Respondent  
Advocates

Mr. Murimi instructed by Murimi, Ndumia, Mbago & Muchela

Court Assistant

Nixon