



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
CAUSE NO. 201 OF 2015
SHEM KISANYA.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF NAIROBI.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

Mr. Khalwale for claimant

Mr. Kithi for 1st respondent

M/S Lubia for 2nd respondent

RULING

1. This suit was filed on 19th February 2015 seeking payment of terminal benefits set out under paragraph 38 (i) to (ix) of the statement of claim for wrongful and unfair termination of employment.
2. From the facts discernable on the face of the pleadings, the claimant was retired with effect from 15th June 2003 by a letter dated 3rd February 2010. At the time the claimant was 50 years. It is alleged that an appeal from the decision of the respondent to retire the claimant is pending todate. See letter from the town clerk dated 2nd November 2009, marked 'SK8'. As at 3rd May 2012 Public Service Commission of Kenya was still addressing the matter internally. See letter dated 3rd May 2012 marked 'SK12'.
3. The respondent filed a notice of intention to raise a preliminary objection on 22nd August 2015 to wit;
 - a. the claimant's statement claim offends the mandatory provision of section 90 of the Employment Act and ought to be struck off;
 - b. the claim offends the mandatory provisions of section 3 of the Public Authorities Limitations Act.
4. It is clear to the court, that there is a dispute of fact as to when, if at all the internal machinery of the 1st respondent was exhausted in respect of this dispute. Furthermore, the retirement effected in

the year 2010 is backdated to the year 2003. This takes the matter out of the purview of the Employment Act, 2007 and therefore section 90 therein.

5. The issue as to when the cause of action crystallised cannot be determined without going into the facts of the case.
6. On the basis of the Mukisa Biscuits case the preliminary objection must await the hearing on the merits.
7. Costs in the cause.

Dated and delivered at Nairobi this 1st day of July, 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE