



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1607 OF 2015

BENSON MOKAMI MASENKENYE.....CLAIMANT

VERSUS

EQUITY BANK LIMITED KENYA.....RESPONDENT

RULING

1. This ruling relates to a Preliminary Objection raised by the Respondent by notice dated 5th October 2015. The objection is based on the ground that the claim is time barred under Section 90 of the Employment Act, 2007.

2. When Counsels for the parties appeared before me on 18th July 2016, they agreed to dispense with the objection by way of written submissions.

3. In the submissions filed on behalf of the Claimant on 5th August 2016, it is submitted that the claim herein is somewhat unique because the Claimant has been on prolonged suspension and there has been no communication on termination of his employment.

4. The Respondent's Preliminary Objection is premised on Section 90 of the

Employment Act which states as follows:

90. Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act, 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.

5. The Claimant states that because he has received no communication on the termination of his employment then his claim cannot be said to be statute barred. This would beg the question as to what brought the Claimant to Court in the first place.

6. In his Statement of Claim dated 9th September 2015 and filed in Court on 11th September 2015, the Claimant seeks relief for unlawful termination of employment. It would appear therefore that by the time of filing suit, the Claimant had notice that his employment had been terminated as far back as February 2009.

7. This Court (variously constituted) has held that it has no jurisdiction to extend time for filing of claims falling under the Employment Act, 2007 (see *Maria Machocho v Total Kenya Limited [2013] eKLR* and

George Hiram Ndirangu v Equity Bank [2015] eKLR.)

8. In line with this jurisprudence, the Claimant's claim filed on 11th September 2015 is way out of the limitation period and the Court has no jurisdiction to entertain it.

9. I therefore strike out the said claim with no order for costs.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Tollo for the Claimant

Ms. Zeina for the Respondent