

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 110 OF 2015

(Formerly Kisumu HCC.23'B' of 2015)

(Before Hon. Lady Justice Maureen Onyango)

GEORGE AMOTH & 14 OTHERS.....CLAIMANT

Versus

KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).....RESPONDENT

R U L I N G

The Claimants filed suit on 12th July, 2013 against the Respondent by their Complaint dated 27th February, 2013 in the High Court of Kenya at Kisumu seeking damages for unlawful casual engagement, interest and costs. The suit was transferred to this court by an order dated 2nd October, 2014.

By a notice of Preliminary Objection dated 18th June, 2015 the Respondent raises a preliminary objection on a point of law against the claim on grounds that it offends the provisions of section 4 of the Limitation of Actions Act and is consequently statute barred. The Preliminary objection was argued by way of written submissions.

In the Respondents submissions filed on 31st May, 2016 it is submitted that the claims which are the subject of the suit herein are alleged to have occurred between 1986 and 1993 while the suit was first filed in the High Court on 12th July, 2014 vide Kisumu HCC No.23 of 2013. That section 4 of the Limitation of Actions Act provides for suits arising from contract to be filed within 6 years. The Respondent submits that section 27 of the Limitation of Actions Act provides for extension of period in case of ignorance of material facts for negligence, nuisance and breach of duty (whether the duty exists by virtue of a contract, written law or independently). It is submitted that an application for leave is made to the court before commencement of action as provided in section 28 of the Limitation of Actions Act and is granted only if the applicant establishes that there is sufficient evidence to establish a cause of action. It is submitted that section 90 of Employment Act provides that no civil action or proceedings based or arising out of the Act or on a contract of service in general shall lie or be instituted unless done within 3 years next after the act, neglect or default complained of or in the case of continuing injury or damage, within 12 months next after cessation thereof. It was submitted that the claimants filed suit out of time making their claim statute barred.

The Respondent relied on the decision of the court in the case of **JOSEPH OWINO v RICHARD M. BENET [2015]eKLR; PETER CHEPKOCHOI MITEI v ESTHER JELAGAT NG'ENY & 3 OTHERS [2014]eKLR; HARRISON NDUNGU MWAI & 500 OTHERS v ATTORNEY GENERAL [2014]eKLR;** and **THURANIRA KARAUARI v AGNES NCHECHE [1997]eKLR.** The holdings in the said decisions are that a claim is extinguished after the expiry of limitation period and a court does not have jurisdiction to entertain the same.

For the claimants it was submitted that although their claims are brought to court after expiry of 22 years, there was fraud by virtue of the Respondent ignoring to apply the law and that the Claimants discovered the material facts in 2013.

Determination

There is no contention that the claims herein relate to casual employment of the Claimants between 1986 and 1993. More than 20 years had lapsed by 2013 when their claim herein was filed in the High Court. The Claimants filed the suit without seeking leave of court to file out of time and the claim is therefore bad in law on the face of it.

Even if the Claimant's sought leave, they would not be entitled to the same. As was stated by the Court of Appeal in the case of **MARY OSUNDWA v NZOIA SUGAR COMPANY LIMITED [2002]eKLR**, section 27 of the Limitation of Actions Act does not give jurisdiction to the court to extend time for filing suit out of time in cases involving contract or any other cause of action other than those in tort. Again in Kisumu Civil Appeal No.6 of 2015 between **KENYA AIRPORTS AUTHORITY v SHADRACK ABRAHAM KISONGOCHI**, the court held that the trial court acted without jurisdiction in allowing the Respondent to file his suit outside the statutory period. The court emphasised that jurisdiction is the bedrock of any court decision and without it, a court's findings are a nullity.

In this case the suit is filed out of time and there is no application to extend time. Even if there was, I would not have jurisdiction to do so. The result is that the suit is bad in law and I accordingly strike it out. There shall be no orders for costs.

Dated, Signed and Delivered this 15th day of September, 2016

MAUREEN ONYANGO

JUDGE