

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 620 OF 2016

BONIFACE INONDI OTIENO.....CLAIMANT

VERSUS

MEHTA ELECTRICALS LTD.....RESPONDENT

RULING

Introduction

1. The claimant brought this suit on 22.8.2016 claiming compensation and terminal dues arising from his unlawful, inhumane and wrongful termination of his employment contract by the respondent on 18.10.2006 at Juba Southern Sudan. He also claims damages for loss of capacity to continue earning due to injuries suffered while on duty.
2. The respondent has filed defence and the Notice of Preliminary Objection (P.O) dated 16.9.2016 challenging the jurisdiction of the court to hear and determine the suit because the suit is statute barred and it is res judicata with respect to Civil Misc.Appl No.2 of 2013 and ICC No. 290 of 2013.
3. The Preliminary Objection was argued on 14.10.2016 by Mr. Stonik learned counsel for the respondent and the claimant acting in person.**Analysis and Determination**
4. The issue for determination herein is whether the suit is statute barred and whether it is also resjudicata.

Statute barred suit

5. There is no dispute that the cause of action arose on 18.10.2006 and that the suit was filed on 22.8.2016 almost Ten years next after the time when the cause of action arose. There is also no dispute that the cause of action was governed by the Limitation of Actions Act with respect to limitation of time. Under section 4(1) (a) of the Act no action founded on contract may be brought unless it is commenced within 6 years next from the time when the cause of action. Likewise under section 4 (2) of the said Act, no action founded on tort may be brought unless it is commenced within 3 years next from the date when the cause of action arose.
6. In view of the foregoing clear provision of the law, it is obvious that the claimant's case which is founded on both contract and tort is time barred because it was commenced 10 years after the respective cause of action arose. The court is therefore barred by the Law from entertaining this suit and therefore I down my tools for lack of jurisdiction. I will not even spend any efforts trying to answer the second question whether or not the suit is res judicata.

Disposition

7. For the reasons stated above the Preliminary Objection is allowed and the suit is struck out with no order as to costs.

Dated, signed and delivered at Mombasa this 25th November 2016

O.N. MAKAU

JUDGE