



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1197 OF 2016

CONSOLIDATED WITH CAUSE NO 1198 OF 2016

AND

CAUSE NO 1199 OF 2016

AND

CAUSE NO 1200 OF 2016

AND

CAUSE NO 1201 OF 2016

AND

CAUSE NO 1202 OF 2016

DOMICIANO KINYUA MAGAMBO.....1ST CLAIMANT

PATRICK MBUTHIA.....2ND CLAIMANT

CHRISTOPHER MATHEKA.....3RD CLAIMANT

GEORGE NDUNGU KAMAU.....4TH CLAIMANT

DOROTHY NKIROTE RINGERA.....5TH CLAIMANT

PATRICK MUTUA.....6TH CLAIMANT

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. This ruling flows from a preliminary objection raised by the Respondent by notice dated 5th July 2016 on the following grounds:

a) That the Claimants' claims are statute barred by dint of Section 90 of the Employment Act, 2007;

b) That the claimants are guilty of unreasonable delay.

2. By consent of the parties, the preliminary objection was urged by way of written submissions.

3. The gist of the objection is that the Court lacks jurisdiction to entertain the Claimants' claim because they were filed after the statutory limitation period set out in Section 90 of the Employment Act. This provision provides 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.

4. In the submissions filed on behalf of the Respondent, reference was made to the decision by the Court of Appeal in ***Owners of Motor Vehicle Lillian 'S' v Caltex (K) Ltd [1989] KLR*** where it was held that once a court determines that it has no jurisdiction it must down its tools.

5. Emerging jurisprudence on the import of Section 90 of the Employment Act is that the Court has no jurisdiction to extend time for filing of claims falling under the Act (see ***Maria Machocho v Total Kenya Limited [2013] eKLR***; ***George Hiram Ndirangu v Equity Bank [2015] eKLR*** and ***Justus Ochido Ope v Kenyatta University [2016] eKLR***).

6. In the submissions filed on behalf of the Claimants, the decision of this Court in ***George Hiram Ndirangu v Equity Bank Limited [2015] eKLR*** was cited. In that decision, the Court defined the phrase 'continuing injury or damage' appearing in Section 90 of the Employment Act as:

"violation of rights under an employment contract such as salary underpayment or failure to pay accrued dues."

7. In my view, the Claimants' claims would fall under the category of continuing injury or damage and they therefore ought to have been brought within twelve months after the last violation.

8. From the respective Memoranda of Claim, the Claimants' claims relate to salaries and accrued benefits dating as far back as their respective dates of appointment, the latest claim being for the year 2008.

9. These claims are evidently statute barred and the Court lacks jurisdiction to entertain them.

10. The result is that the Claimants' claims are struck out with no order for costs.

11. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF NOVEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Waiganjo for the Claimants

Mr. Anyona for the Respondent