



**REPUBLIC OF KENYA**

**IN THE IN THE EMPLOYMENT & LABOUR RELATION COURT**

**AT MOMBASA**

**CAUSE 346 OF 2013**

**DISMUS NYANGA WANGUNU ..... CLAIMANT**

**VERSUS**

**KENYA REVENUE AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The claimant was employed by the 1<sup>st</sup> respondent in the year 2000 as an accountant. He was however arrested on 11.5.2001 and unlawfully detained until 15.5.2001 when he was arraigned in court and charged with theft and conspiracy to defraud the 1<sup>st</sup> respondent in criminal case No. 1029 of 2001 but after trial he was acquitted on 5.12.2008. It is the claimant's case that while the trial was pending the 1<sup>st</sup> respondent unlawfully and wrongfully dismissed him from employment on allegation that he had been charged in the criminal court with theft and conspiracy to defraud her. After the acquittal he sought reinstatement to work but the same was rejected by the employer and he brought this suit on 3.12.2009 claiming kshs.11, 293,616.40 as damages for breach of his employment contract, general damages for unlawful arrest and malicious prosecution plus kshs. 200,000 as special damages. The first and second respondents entered appearance and filed defence on 22.12.2009 and 17.11.2010 respectively denying liability and raising Preliminary Objection (P.O) objecting to the suit on grounds that it is statute barred and that it was filed before service of statutory notice of intention to sue the government. The P.O before the court for determination is the one on time bar raised by the first respondent and it was disposed of by written submissions.

**Analysis and determination**

2. After careful consideration of the pleadings and submissions filed, there is no dispute that the claimant's employment contract was terminated in May 2001 as pleaded in paragraph 8 of the plaint and filed the suit on 3.12.2009 8 years after the termination. The issue for determination is whether the suit is statute barred in as far as the claim for damages for breach of employment contract is concerned.

**Time barred suit**

3. As correctly submitted by the 1<sup>st</sup> respondent the law applicable in determining whether the claim founded on employment contract herein is time barred is section 4 of the Limitation of Actions Act which

provides as follows:

***“The following actions may not be brought after the of six years from the date on which the cause of action accrued –***

***(a) Actions founded on contract;”***

4. The question that begs answer is whether a suit founded on employment contract, can competently be brought after 8 years from the date when the cause of action arose. The answer is simply, no. The cause of action herein arose in May 2001 when the claimant dismissed for engaging in fraud and theft. Under section 4 of the Limitation of Actions act, the claimant had 6 years within which to file suit to recover his employment benefits, if any. However went to sleep until 3.12.2009, 8 year after the dismissal, when she brought this suit.

5. In view of section 4(1)(a) of the said Act, I make a finding that the claim for damages founded on the claimant’s contract of employment herein was filed out of time and it is therefore statute barred. The corollary to the foregoing finding is that the court is barred from determining the said dispute in the suit and as such I must forthwith down my tools for want of jurisdiction to entertain the said claim. But before downing the tools, I must, which hereby do, strike out the claim for damages that is founded on employment contract between the claimant and the 1<sup>st</sup> respondent.

6. The claim for damages founded on the tort of unlawful arrest, imprisonment and malicious prosecution is however not statute barred because the claimant was acquitted of the criminal charges on 5.12.2008 and filed the suit on 3.12.2009, 2 days before the lapse of one year limitation period provided by the Government Proceedings Act, Cap 40 of the laws of Kenya. The said tortuous claim falls outside the jurisdiction of this court save when it is enjoined to an employment dispute. Having allowed the objection and struck out the employment claim herein above, I do not intend to continue doing what is in other institution’s jurisdiction. I therefore refer the remaining dispute herein to the subordinate court which has the jurisdiction to determine tortuous claims for final determination.

**Disposition**

7. For the reasons stated above, the P.O by the 1<sup>st</sup> respondent is allowed to the extent stated above and the remainder of the suit is referred to the Chief Magistrates court at Mombasa for final determination. Each party shall bear his or her own costs.

**Signed, dated and delivered at Mombasa on 18<sup>th</sup> day of November 2016.**

**ONESMUS N.MAKAU**

**JUDGE**