

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 147 OF 2015

JEREMIAH NJUE JOEL.....CLAIMANT

VERSUS

NGAGAKA WATER AND SANITATION COMPANY LIMITED.....1ST RESPONDENT

TANA WATER SERVICES BOARD.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 11th November, 2016)

RULING

The claimant filed the memorandum of claim on 28.06.2016 through Simiyu, Opondo, Kiranga and Company Advocates. The claimant has pleaded that he was employed as the Technical Manager for the 1st respondent on 05.10.2005. He has further pleaded at paragraph 6 of the claim that on or about 01.04.2011 he was summoned to the General Manager's office where he was handed a letter dated 31.03.2011 showing that he had been replaced by another person as the 1st respondent's Technical Manager. The claimant's last pay was for March 2011 and thereafter he was not paid terminal dues for his diligent service for 19 years. On 24.07.2013 the claimant made a complaint to the Honourable Attorney General for the attention of the Ministry of Environment, Water and Natural Resources. On 26.05.2015 he wrote to the Commission on Administrative Justice seeking intervention. In both instances there was no amicable administrative resolution of the claimant's concerns and the claimant filed the present suit. The claimant alleged that the termination of the contract of employment was unfair, unlawful and unconstitutional and prayed for payment of terminal dues and compensation for unfair termination plus costs and interest.

The 1st respondent filed the response on 04.08.2016 through Lucy Mwai & Company Advocates. At paragraph 17 the 1st respondent stated that the claimant's claim was time barred by virtue of section 90 of the Employment Act, 2007 and that the 1st respondent shall seek to argue the preliminary objection at the earliest opportunity. The 1st respondent prayed that the suit be dismissed with costs.

The 2nd respondent filed the response to the claim on 23.08.2016 through Gichuhi Mwangi & Associates. The 2nd respondent prayed that the claim be dismissed with costs.

This ruling is the determination of the preliminary objection. It was submitted for the claimant that as per Bosire J in **Rawal-Versus-Rawal (1990)KLR**, the object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand and on the other hand protect a defendant after he had lost evidence for his defence from being disturbed after a long lapse of time; it is not to extinguish claims. It is submitted for the claimant that the complaint on 26.05.2015 to the Commission on Administrative Justice amounted to some kind of alternative dispute resolution so that time stopped running in the matter.

For the 1st respondent it was submitted that section 90 of the Employment Act, 2007 was in mandatory terms per the Court of Appeal in **Attorney General and Another –Versus- Andrew Maina Githinji and Another [2016]eKLR**. There was no dispute that the termination was on or about 01.04.2011 so that the 3 years of limitation under the section lapsed on or about 01.04.2014. Thus the suit filed on 28.06.2016 was time barred. The 2nd respondent submitted that the 1st respondent's preliminary objection

be upheld.

The court has considered the material on record. There is no dispute on the dates of termination and filing of the suit. First, the court finds that the letter of complaint dated 26.05.2015 to the Commission on Administrative Justice came after lapsing of the 3 years on 01.04.2014 and the court doubts that it initiated an alternative dispute resolution mechanism and in any event, such initiation of an alternative dispute resolution process could not operate to revive the lapsed time of limitation as at 01.04.2014. Second, it is clear that the suit was filed after the lapsing of the 3 years of limitation of action as prescribed in section 90 of the Employment Act, 2007. Accordingly, the preliminary objection will succeed and the claimant's suit is liable to dismissal with costs.

In conclusion, the preliminary objection urged for the 1st respondent is hereby upheld with orders that the claimant's suit filed on 28.06.2016 by the statement of claim dated 28.06.2016 is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 11th November, 2016.**

BYRAM ONGAYA

JUDGE