



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 11 OF 2013

ADOW MOHAMED KANYARE..... CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL (sued for and on behalf of the Permanent Secretary)

MINISTRY OF EDUCATION.....1ST RESPONDENT

BOARD OF GOVERNORS (Mandera Arid Zone

Primary School formerly known as Mandera

DEB Boarding Primary School).....2ND RESPONDENT

RULING

1. By a notice of preliminary objection dated 17th November, 2014, the Respondent seeks the dismissal of the suit on the ground that the claim is time barred contrary to section 3(2) of the Public Authority Limitation Act (Cap 29) and section 90 of the Employment Act.
2. According to the Respondent, the cause of action accrued on 18th January, 2004 when the Claimant was retired yet the suit herein was filed on 6th January, 2013. For this reason the Court lacks jurisdiction to hear and determine the matter.
3. The Claimant on the other hand argues that the objection is misguided and in total disregard of the law. The sole intention of the objection, the Claimant contends, is to subvert the course of justice and deny the Claimant his just and rightful entitlement. According to counsel, the 2nd Respondent had a legal obligation towards the Claimant to pay his remuneration as required by law hence it was confounding that they have raised the objection even after acknowledging and accepting liability to settle the amounts owed to the Claimant.
4. Counsel submitted that on several occasions, which were exhibited by documents in support of the claim, the Respondent admitted their indebtedness to the Claimant. According to counsel the last admission was on 5th April 2012. This is when the cause of action began to run.
5. I have reviewed the claim herein together with the supporting documents and I am of the view that the cause of action herein accrued at the point when it became clear to the Claimant that the Respondent was not about to settle the claim. The Court has observed in the case of *John Githiga Gachungwa & 3 Others v. Commissioner for co-operatives & 2 Others HCC No. 59 of 2009 (Nyeri)* as follows:-

***“...Statutes of Limitation seek to hold a balance between two competing interests: the interest of the Claimants in having maximum opportunity to pursue their legal claims, and the interests of the defendants in not having to defend stale proceedings however, where it is unclear as to the exact point when the cause of action actually accrued, the Court ought to be circumspect in invoking the law of limitation to shut out the plaintiffs. Perhaps the best test in such cases is for the Court to seek to determine the point at which the plaintiff had or ought to have been expected to have knowledge of the accrual of the cause of action.*”**

6. Lord Donaldson of Lynton MR in the case of ***Halford v. Brookes (1991) 1 WLR*** observed that knowledge does not mean knowing for certain and beyond possibility of contradiction. It means knowing with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking advice and collecting evidence. In other words, the Claimant must know enough for it to be reasonable to begin to investigate further.

7. It is not in dispute that the Claimant was retired on 18th January, 2004. The issue of payment of his terminal dues has remained live and subject to several correspondence culminating in the letter of demand dated 28th March, 2012.

8. As at 24th February, 2011, the District Education Officer – Manderla East was still writing to the Permanent Secretary, Ministry of Education urging that the Claimant’s case be resolved once and for all. Considering bureaucracy in public service and the pace of snail mail, time can elapse very quickly. Therefore taking into account the nature and volume of correspondence on this matter issued by the Ministry’s agents urging for it to be resolved, it cannot be said with propriety and exactness that the Claimant had any earlier sufficient knowledge to justify his embarking on seeking other means of resolving this matter than March, 2012 when he decided to seek legal intervention.

9. In the case of ***Bush v. Stevens (1963) 1QB1*** relied on by the Claimant, Lawson J aptly observed.

“...the subsection does not change the nature of the right; it provides that in the specific circumstances of an acknowledgement or payment the right shall be a notional birthday ...it arises again in renewed youth”.

10. In the case of ***Ali EI Busaidy v. Kenya Commercial Bank (2010) eKLR*** the Court observed as follows:-

“what’s more because of the acknowledgement made, the section 23 (3) of the Limitation of Act comes to the defendant’s aid that the right accrues on the date of acknowledgment”.

11. The Court is therefore of the view that the continuous concern by the 2nd Respondent’s agents over the payment of the Claimant’s terminal dues, notionally renewed the cause of action hence it could no longer be sustainable to argue that the cause of action accrued in January, 2004 when he was retired. Such an interpretation would yield unfair and unjust consequences to the Claimant especially after the 2nd Respondent had raised hopes in him that his claim would be settled.

12. To that extent the preliminary objection is disallowed and the suit shall proceed to trial on merit.

13. It is so ordered.

Dated at Nairobi this 21st day of January 2015

Abuodha J. N.

Judge

Delivered this 21st day of January 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge