



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 195 OF 2013

ALFRED MWANGI KANINUCLAIMANT

VERSUS

DEL MONTE KENYA LIMITEDRESPONDENT

RULING

1. The Respondent has raised preliminary objection in paragraphs 4, 5 and 6 of the statement of response filed on 3rd April 2013 to the effect that the Claim is statutory barred by dint of **Section 90** of the **Employment Act** in that from the face of the statement of claim, it is clear that the cause of Action arose on 12th November 2009 and the Claim was filed on 11th February 2013 more than three (3) years period within which an employment claim ought to be filed in terms of **Section 90** of the **Employment Act 2007**.
2. The claim is in respect of terminal benefits which include;
 - a. one month salary in lieu of notice;
 - b. unpaid salary till date of expected retirement;
 - c. accrued leave for fourteen (14) years;
 - d. commuter allowance till retirement;
 - e. medical, school and paternity leave allowance till retirement;
 - f. severance pay for seventeen (17) years;
 - g. house allowance; and
 - h. compensation for loss of employment;
3. **Section 90** reads;

*“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. The Claim was filed three (3) years and four (4) months from the time the cause of action arose.
5. The injury or damage complained of are of a continuous nature and had not abated by the time the claim was filed.
6. The filing was therefore done within the one (1) year window as contemplated under ***Section 90 of the Employment Act.***
7. The claim is therefore not time barred. The objection is not upheld and the suit should proceed on the merits.

Dated and delivered at Nairobi this 5th day of February, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE