



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 1001 OF 2014

OBADIAH MUTISYA KITONYI CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL..... RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection to wit;
 - a. the Claimant's suit is time barred contrary to Section 3(2) of Public Authority Limitation Act Cap. 39;
 - b. The claim is also in contravention of Section 90 of the Employment Act, 2007 which bars claims based on employment contract be filed after 3 years from the date the cause of action arose.
2. The court therefore lacks jurisdiction to entertain the same.
3. The objection is opposed vide a Replying Affidavit of the Respondent.
4. The Claimant states that the cause of action arose on 28th July, 2006, when he exhausted the internal disciplinary machinery of the Respondent upon receiving the result of the final Appeal. The letter is attached to the Affidavit and marked 'OMK1'.
5. This suit was subsequently filed on 16th July, 2007 less than one year from the time the cause of action arose.
6. It is indisputable therefore that this suit was filed within the time frame set out under Section 3(2) of the Public Authority Limitation Act Cap. 39 of the Laws of Kenya and Section 4(1) of the Limitations of Actions Act Cap. 22 of the Laws of Kenya.
7. Furthermore the Employment Act, 2007 was enacted after the above two legislations and Section 90 of the Act, applies for the purposes of limitation of actions based on employment contract.
8. The Section provides for a three year limitation period.
9. An employee cannot be expected to await completion of the internal statutory appeal process and be

in court at the same time. This would render the inter appeal process academic.

10. The Preliminary Objection is dismissed accordingly.

11. Costs in the cause.

Dated at Nairobi this 30th day of April, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE