



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 187 OF 2014

JOHN KIMUTAI YEGO..... CLAIMANT

V

PYRETHRUM BOARD OF KENYA.....RESPONDENT

RULING

1. John Kimutai Yego (Claimant) filed a Memorandum of Claim against the Pyrethrum Board of Kenya (Respondent) on 10 June 2014 alleging that the termination of his employment was unfair and seeking compensation, unpaid salaries, deductions wrongfully made from salaries, terminal dues, pay in lieu of notice and leave pay.
2. Together with the Memorandum of Claim, the Claimant filed an application seeking injunctive relief, which relief were granted by Ongaya J on 10 June 2014 (the Claimant's properties had been attached on account of rent arrears).
3. On 18 June 2014, the Respondent filed a Notice of Preliminary Objection contending that the Cause was statute barred.
4. When the Cause was mentioned on 19 June 2014, the Claimant sought for time to respond to the Preliminary Objection and the Court granted him time to respond. The Court directed that Preliminary Objection and the application for injunctive relief be heard together on 3 July 2014.
5. On 3 July 2014, the Claimant sought and got leave to amend the Notice of Motion.
6. On 17 July 2014, the Claimant filed an Amended Notice of Motion seeking restraining orders against the Respondent from selling his proclaimed/attached properties.
7. When the Amended Motion and Preliminary Objection came up for hearing on 31 July 2014, the Court adjourned the hearing to 22 September 2014 but on this date the Claimant's Advocate was reported ill and the proceedings were further adjourned to 14 October 2014. The Advocate was reported ill even on this latter day and the Court fixed the hearing on 17 November 2014.
8. On 18 November 2014, the firm of Murimi, Ndumia, Mbago & Muchela Advocates filed an application seeking leave to withdraw from acting for the Respondent (this application was not prosecuted).
9. After several other false starts, the Preliminary Objection proceeded to hearing on 19 March 2015.
10. Mr. Murimi for the Respondent submitted that according to paragraph (d) of the Amended Statement of Claim, the Claimant pleaded that he was suspended in September 2008 and dismissed in May 2009. In the view of Mr. Murimi, the Claimant had until around 19 May 2012 to file his claim but the same was lodged in Court only on 10 June 2014, two years outside the three years permitted by section 90 of the Employment Act, 2007.
11. Mr. Murimi referred the Court to the holding by this Court in *Stephen Kamau Karanja & Ar v Family Bank Ltd* (2014) eKLR.
12. Mr. Njuguna who urged the Claimant's case submitted that section 90 of the Employment Act, 2007 was not meant to aid a mischievous party against an innocent party. He further submitted that the Constitution protected the Claimant from the technicalities of the Statute (section 90 of the

- Employment Act, 2007).
13. He finished off by submitting that the authority cited by the Respondent was distinguishable on the facts and circumstances.
 14. From the record, it is indisputable that the Claimant was dismissed from employment through a letter dated 19 May 2009. By that time, the Employment Act, 2007 was already in operation and pursuant to section 90 of the Act, he should have lodged the claim within 3 years.
 15. The 3 years lapsed on 18 May 2012. When he filed the Statement of Claim on 10 June 2014, his cause of action was statute barred and the Court so finds.
 16. The Claimant attempted to find solace under the Constitution. He must have been referring to the now famous Article 159(2) (d).
 17. To my mind, the issue of limitation is not just a procedural question. And in this regard, I would refer to my holding in the *Peter Nyamai & Ors v M J Clarke Ltd* (2013) eKLR that the time limit on filing of Claims is a jurisdictional question and not merely procedural..... it is general legal principle that a limitation clause grants a Respondent or Defendant an accrued substantive benefit/right/defence of limitation.
 18. The Statement of Claim herein was filed outside the prescribed time and therefore it must be struck out and it is so ordered.
 19. There will be no order as to costs.

Delivered, dated and signed in Nakuru on this 10th day of April 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Njuguna instructed by Mboga G.G. Advocates

For Respondent Mr. Murimi instructed by Murimi, Ndumia, Mbago & Muchela Advocates