



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NO. 490 OF 2014

BETWEEN

PETER MWAMBAJI KOKOTA CLAIMANT

VERSUS

A.A. TRANSPORTERS LIMITEDRESPONDENT

Rika J.

Court Assistant: Benjamin Kombe

**Ms. Onyango holding brief for Ms. Kedeki Advocate instructed by Kedeki & Company Advocates
for the Claimant**

**Mr. Nyange Advocate holding brief for Mr. Lumatete instructed by Lumatete Muchai & Company
Advocates for the Respondent**

RULING

1. The Claimant filed his Statement of Claim on 9th October 2014. He worked as a Mechanic having been employed by the Respondent in 2000. He claims his contract was terminated by the Respondent in November 2008.
2. He challenges the termination decision, alleging it was unlawful, unfair, illegal and wrongful. He prays for compensation and termination benefits – total Kshs.518,400.
3. The Respondent filed its Statement of Response on 30th October 2014. The Respondent also filed a Notice of Preliminary Objection on the same date. Objection is based on the 3-year time limit, under Section 90 of the Employment Act 2007, placed on the filing of employment claims.
4. Parties agreed this Objection be considered and determined by the Court, based on their respective Pleadings and Submissions.

The Court Finds:-

5. The Claimant does not dispute his contract was terminated in November 2008, or that he filed his Claim on 9th October 2014 – some 6 years down the line.

6. He appears to acknowledge in his submission that the Claim is governed by the Employment Act 2007. In seeking to avoid Section 90, he submits that every general rule has an exception; it is sorrowful the Employment Act 2007 does not provide exceptions; the mental and financial status of the Claimant made it difficult to approach the Court in good time; and the Industrial Court was geographically outside the Claimant's place of residence, all making it difficult to seek justice in good time.

7. The Court is full of sympathy for the Claimant, but must uphold the past decisions of the Court, which leave no room for the tampering with the strict timeframe set under Section 90 in coming to Court.

8. The Claimant cannot complain about his mental and financial constraint. The Industrial Court has always received disputes at no, or at a minimal fee. It has been user-friendly. It has always been geographically accessible, with Judges coming to Mombasa on circuit, when there was no resident Court. Section 90 is not a general rule, to which there are exceptions; it is a fundamental, substantive provision, conferring the Court temporal jurisdiction. The Claimant only has himself to blame for inaction.

9. His Claim is time-barred. The Court cannot assume jurisdiction. He approached the Court 6 years late.

IT IS ORDERED:-

(a) *The Claim is hereby struck off with no order on the costs.*

Dated and delivered at Mombasa this 29th day of May 2015

James Rika

Judge