



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NUMBER 1165 OF 2014

BARNES MWEMA..... CLAIMANT

VERSUS

KENPOLY LIMITED.....RESPONDENT

RULING

1. The respondent in this suit raised a preliminary objection on the issue that this Court lack jurisdiction to hear and determine the suit by virtue of section 90 of the Employment Act and section 4(1) of Limitation of Action Act since the same has been brought outside the period of six years as per Limitation of Action Act and three years as per Employment Act.

2. The claimant in opposing the application stated the respondent sent the claimant on unlawful and indefinite suspension. To demonstrate this the claimant's counsel drew the Court's attention to the suspension letter marked as appendix 2 which read in the relevant part as follows:-

“...the management has decided to send you on compulsory leave starting from 1st September 2007 until the Court matter is resolved.”

3. According to counsel, the indefinite suspension meant the cause of action was continuous and that it crystallised in 2012 when he was denied access to the respondent's premises.

4. Counsel, relying on the case of **Mukisa Biscuit Company** submitted that a preliminary objection presupposes a pure point of law yet the objection before the Court is on when the cause of action accrued which is not a purely legal point but a factual one which ought to be proved by evidence at the trial.

5. It is acknowledged that the purpose of statutes of limitation is to hold a balance between two competing interests: that is the interest of claimants in having maximum opportunity to pursue their legal claims and the interest 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 lean more towards permitting access to its process than shutting out a potential claimant. The best test in such circumstances is for the Court to seek to determine the point which the plaintiff 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. Brooks (1997) 1 WLR 428** noted that knowledge does not mean knowing for certain and beyond possibility of contradiction. It means knowing with sufficient confidence to justify embarking on preliminaries to the issue of 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. The claimant herein was suspended until some Court matter was resolved. No evidence has been laid before the Court on which Court matter it was, whether or not the same was concluded and when this happened. On the other hand the claimant has averred that he followed up his issue of suspension with a Mr. Ramesh Patel of the respondent until 2012 when the said Patel refused to pick his calls and further when he was denied access to the respondents premises.

8. In the circumstances it is not crisp clear when the cause of action accrued hence it would be unjust to strike the suit out for being statute barred without determining exactly when the cause of action accrued.

9. The preliminary objection is therefore overruled and the same is dismissed with costs.

10. The suit shall proceed to trial on merit.

11. It is so ordered.

Dated at Nairobi this 22nd day of May 2015

Abuodha J. N.

Judge

Delivered this 22nd day of May 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge