



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO. 508 OF 2014

ALICE MORAA KOSGEI &

GEOFFREY ONGECHI (suing for the estate of

Daphine Chebet Kosgei (Deceased).....CLAIMANT

v

MOI TEACHING & REFERRAL HOSPITAL.....RESPONDENT

RULING

1. The Claimants filed this cause against the Respondent on 13 October 2014 and Notice of Summons with a return date of 21 November 2014 was issued the next day.
2. The Federation of Kenya Employers filed a Memorandum of Appearance on behalf of the Respondent on 20 November 2014.
3. When the Cause was called out on 21 November 2014, the Claimants were not present neither were they represented.
4. The Court directed the Deputy Registrar to issue a notice to show cause to the parties and directed that the Cause be mentioned on 5 December 2014.
5. According to the record, the Deputy Registrar issued a notice dated 24 November 2014 addressed to C.D. Nyamweya & Co. Advocates and Moi Teaching & Referral Hospital.
6. On 5 December 2014, none of the parties were in attendance/represented and the Court dismissed the Cause.
7. About some 5 months later, on 30 April 2015 to be exact, the Claimants filed a motion seeking the reinstatement of the Cause. The Court directed that the application be served for *inter partes* hearing on 16 June 2015.
8. Among the grounds outlined on the face of the motion were that the hearing date was not communicated to the parties; that the mistake that led to the dismissal was that of the Advocate and not the Claimant and that the Claimants had a good case.
9. The supporting affidavit of C.D. Nyamweya Advocate deposed that the Advocate he had briefed to

hold his brief on 21 November 2014, a Mr. Mbatia had informed him that the Cause was not listed on that day, and therefore he was not aware of the mention fixed for 5 December 2014. The Advocate also denied receiving the notice from the Deputy Registrar.

10. The Respondent left the matter to the Court.

11. The cause of action herein, according to the pleading arose from the summary dismissal of the deceased on 2 June 2010. The deceased appealed the dismissal and the appeal was dismissed on 14 September 2011.

12. Taking the date of the communication of the dismissal of the appeal as the date the cause of action accrued (latest), the Claim should have, by dint of section 90 of the Employment Act, 2007 been commenced by 13 September 2014.

13. The Claim was commenced on 13 October 2014 outside the limitation period. In this regard, the contention by the Claimants that they have a good case to ventilate is untenable.

14. The Court reaches this conclusion purely based on the facts as set out in the Memorandum of Claim and it is conscious that the parties did not directly address the issue of limitation.

15. The Claimants also contended that the mistake that led to the dismissal was that of their Advocate and the same should not be visited upon them. It is good the Claimants have admitted that they confirmed from the file that the matter was called out when it was dismissed.

16. On this basis, the Court would have been minded to reinstate the Cause but because of the limitation issue, the Cause will not go any further as in any case, the Court has no jurisdiction to grant leave/extend time to file claims which are statute barred. Prudent use of judicial time dictates against allowing the motion.

17. In the event, the Court dismisses the motion dated 23 March 2015 with no order as to costs.

Delivered, dated and signed in Nakuru on this 26th day of June 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Magatta instructed by C.D. Nyamweya & Co. Advocates

For Respondent Mr. Masese, Senior Legal Officer, Federation of Kenya Employers

Court Assistant Nixon