



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 374 OF 2013**

**(Before Hon. Justice Hellen S. Wasilwa on 25<sup>th</sup> June, 2015)**

**MURABU CHAKA TSUMA .....CLAIMANT**

**VERSUS**

**MAERSK KENYA LIMITED .....RESPONDENT**

**RULING**

1. The Respondents herein have raised a Preliminary Objection in this matter and contend that the action is time barred, the action having been instituted outside the 6 years Limitation period set out under Section 4 (1) (a) of the Limitation of Actions Act. They have therefore asked the court to strike out this suit with costs.
2. From the pleadings in this case, the cause of action occurred on 20<sup>th</sup> November 2006 when the Claimant was dismissed from employment on account of gross misconduct. At the time, the Employment Act Chapter 226, (now repealed) was the one in force.
3. The Claimant was dismissed following his being charged in a criminal court on 20<sup>th</sup> November 2006. He was convicted by the lower court but on appeal, the appeal was allowed and the conviction and sentence set aside.
4. The Respondents have cited various case law including Peter **Musembi Nzioki vs Barclays Bank of Kenya Limited (2013) eKLR** – where Hon. Judge Mbaru in upholding a Preliminary Objection, found that the claim was time barred having found that the cause of action occurred in 1999 and the case was filed in 2011.
5. The Claimants on their part opposed the Preliminary Objection. They submitted that this case is founded in contract and provisions of Section 4 of the Limitation of Action Act, the same falling under the repealed Employment Act Chapter 226 Laws of Kenya. The Claimants also cited Civil Appeal (NAI) No. 42 of **2013 Keziah Stella Pyman & 2 others v Paul Mwololo Mutevu & 8 others.**
6. J. A Ouko in extending time within which a record of appeal is to be filed, relied on order 50 Rule 4 of the Civil Procedure Rules and held that when time is running, the dates between 21<sup>st</sup> day of December to 30 day of January in the following year should not be included.
7. In this case, it is true that the Claimant was terminated on 20<sup>th</sup> November 2006. He filed his claim on 21<sup>st</sup> March 2013. Based on strict interpretation of Chapter 22 Section 4 (1) (a), this suit ought

to have been filed within 6 years, the last day being 19<sup>th</sup> November 2012 as Chapter 226 didn't have a provision on limitation.

8. However, under order 50 Rule 4 of the Civil Procedure Rules:

***“Except where otherwise directed by a Judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) or the amending, delivering or filing of any pleadings or the doing of any other act:***

***Provided that this rule shall not apply to any application in respect of a temporary injunction”.***

9. Based on this provision and on the holding of Hon. J. A Ouko in the **Paul Mwololo case (supra)**, the period between 20<sup>th</sup> November 2006 to 19<sup>th</sup> November 2012 had a total number of days of 42 days extra in each year all totaling  $42 \times 5 = 210$  days. This number of days taken from 19<sup>th</sup> November 2012 pushes the limitation period to about 7 months forwards to about June 2013.

That being the case, I find that by filing this case in March 2013, Claimant was within the limitation period. The Preliminary Objection therefore is found without merit and I dismiss it accordingly and allow the case to proceed for hearing.

A hearing date be taken in the normal cause at the registry.

Read in open Court this 25<sup>th</sup> day of June, 2015

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Owiti for Respondent

Leli for Claimant