



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 614 OF 2011**

**GERALD NGUMBAO KIYAMA..... CLAIMANT**

**VERSUS**

**SALA TERRENA CO. LTD..... RESPONDENT**

**RULING**

**INTRODUCTION**

1. The Respondent has filed the Notice of Motion dated 20.3.2015 seeking to have the suit herein struck out with costs for being time barred. The motion is supported by the affidavit sworn by Christina Harris on 20.3.2015. The gist of the motion is that the Claimant voluntarily resigned from his employment in 2006 and filed this suit on 5.11.2014. The time taken, by the Claimant to file the suit according to the respondent was 7 years instead of the 3 years provided for under the law.
2. The Motion was not in any manner opposed by the Claimant even after service. The court was therefore left to consider the motion and the pleading filed by both parties.

**ANALYSIS AND DETERMINATION**

3. The only issue for determination in the motion is whether the suit before the court is time barred. There is no dispute that the suit was filed on 5.11.2014 although the termination date and the manner of the termination is in dispute. On the one hand the respondent contends that the Claimant resigned in 2006 while on the other hand the Claimant avers that he was wrongly dismissed by the respondent in 2009.
4. Whichever way one looks at the matter, the suit is time barred and it should be struck out. Firstly, if the Claimant resigned in 2006 as averred by the respondent, the law applicable to the cause of action was the Limitation of Action Act section 4 which limited the right to sue under a contract to 6 years. In that case the right to sue expired after 2012. On the other hand, if indeed the Claimant was dismissed in 2009 as he avers, the law applicable to his cause of action is section 90 of the Employment Act 2007 which limits the right to sue to only 3 years. In that second case, the claim expired after 2012.
5. Regrettably therefore the court finds that the suit herein having been filed on 5.11.2014, is time barred and the court must now down its tools for want of jurisdiction.

**DISPOSITION**

6. For the reasons stated above the Notice of Motion dated 20.3.2015 is allowed and the suit herein struck out. No order as to costs.

**Dated, signed and delivered this 19<sup>th</sup> day of June 2015.**

**O. N. Makau**

**Judge**