

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 574 OF 2014

JOHN MWAKAVI SYANDA.....CLAIMANT

Versus

PETROCITY ENTERPRISES LTD.....RESPONDENT

RULING

INTRODUCTION

1. The Claimant brought this suit on 17.11.2014 alleging that he was unlawfully declared redundant by the Respondent on 7.6.2011 and prayed for damages. The suit was accompanied by the Claimants' demand letter and other documents.
2. The Respondent responded to the suit by filing a preliminary objection (P.O.) dated 16.2.2015 challenging the suit for being filed out of time. According to the respondent the redundancy was done on 7.6.2011 and as such any right to suit expired 3 years after that date within the meaning of section 90 of the Employment Act.
3. The Claimant has opposed the P.O. by submitting that although the Claimant was laid off on 7.6.2011 he was transferred to the respondents' Makupa Filling Station where he continued to work until 27.11.2011 when he was unlawfully dismissed. The Claimant has in addition to the submissions amended his Claim without leave to have his pleadings reflect the said transfer.

ANALYSIS & DETERMINATION

4. After lawfully considering the pleadings and the written submissions filed, there is no dispute that the parties herein were formally engaged in an employment contract. There is also no dispute that on 7.6.2011, the Claimant was laid off. There is also no dispute that the Claimant was transferred or re-engaged by the respondent and continued to work until 27.9.2011 or 27.11.2011 when he was allegedly dismissed. The foregoing finding is founded on Claimants' submissions which are corroborated by the exhibits annexed to Memorandum of Claim filed on 17.11.2014. The exhibits includes the demand letter dated 8.7.2014 which alleged that the Claimant had been transferred after the redundancy in June 2011. The Respondent has not filed any defence to contest the Claimant's averments that he was transferred or re-engaged after the lay off. The issue for determination herein is whether the suit is time barred.

Time Barred Suit

5. The purpose of the Court is to do just and not to deny litigants hearing summarily. In the present case, the pleadings before the court seems to be more of the problem than the facts. The Claimants pleadings are not detailed enough to cover all the issues being raised in the preliminary objection. Likewise filing a preliminary objection without a substantive defence has denied the court full disclosure. The Court will therefore not allow the Preliminary Objection and deny the Claimant is day in court on the basis of the poor pleadings.

6. Consequently, the court directs and grants leave to the parties to file or amend their substantive pleadings after which the defence may revisit the preliminary objection on time bar if she deems fit.

DISPOSITION

7. For the reasons stated above, the preliminary objection is dismissed with an order that costs shall be in the cause.

Dated, signed and delivered this 19th day of June 2015.

O. N. Makau

Judge