



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NUMBER 1058 OF 2011

SHEILA WARUGA KIMANI.....CLAIMANT/RESPONDENT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT/APPLICANT

RULING

1. By a motion dated 24th October, 2014 the respondent seeks the dismissal of the claimant's claim in its entirety on the ground that the claim against the respondent is time barred under the Public Authorities Limitations Act and that some of the complaints in the suit arise outside the course of the claimant's employment and as such the Court lacked jurisdiction to hear the same.
2. According to Counsel for the respondent, the claimant was retired on 10th January, 2008 and the claim filed on 10th June, 2011 a period of 3 years and 5 months later. This was contrary to section 3(2) of the Public Authorities Limitation Act Chapter 39 Laws of Kenya which provides that no proceedings founded on contract shall be brought against the government or local authority after the end of three years from the date on which the cause of action accrued.
3. Counsel for the claimant on the other hand submitted that the respondent published a magazine titled "Disciplinary cases Issue No. 4 March, 2007 to November, 2008" in which the respondent cast the claimant in a bad light as it cast aspersions on her integrity, industry, sense of Judgment and capacity to perform the only career she had trained in and performed in the last two decades.
4. According to Counsel, the claimant found out about the said publication on or about March, 2011 when she visited the respondent's premises at Times Tower and was informed of the same by numerous members of staff. Counsel therefore argued that the cause of action arose in 2011 and as such is not time barred. According to Counsel the claim is based on the fact that the respondent publicized the alleged disciplinary issue against the claimant in an unflattering manner, actuated by malice, bad faith and was calculated to diminish her future prospects for finding alternative employment. Counsel further submitted that it was trite law that in order to establish a case for defamation it must be shown that the defamatory statement was published to a 3rd party and time thereafter begins to run.
5. Public Authorities Limitation Act referred to earlier prohibits the filing of suits based on contract beyond three years after the accrual of the cause of action. The relationship between the claimant and the respondent was that of an employer and employee hence contractual. The claimant was retired from the services of the respondent on 10th January, 2008. She appealed against the decision on 8th February, 2008. On 28th April, 2008 she was informed by the

respondent that her appeal to the Commissioner General did not raise any new grounds or material facts to warrant a review of the decision to retire her. It would therefore mean that the contractual relationship between the claimant and the respondent formally ended on 28th April, 2008 when she was informed of the disallowance of her appeal. Time therefore began to run from then hence her claim challenging her retirement ought to have been by 28th April, 2011. This suit was filed on 30th June, 2011 some two months after the expiry of 3 years provided for by the Public Authorities Limitation Act.

6. The alleged disparaging remarks about the claimant discovered in March, 2011, were not in her knowledge or contemplation when she went through the disciplinary process and eventually retired by the respondent. They therefore could not have formed any ground or evidence to challenge her retirement in Court. She came across them after the termination of the contractual relationship between her and the respondent hence constituted a new cause of action.

7. The jurisdiction of this Court is derived both from the Constitution and the Industrial Court Act. Whereas it is permissible for the Court to entertain constitutional as well as private law and public law issues, these must arise or be closely connected to those matters which the Court has jurisdiction under section 12 of the Industrial Court Act.

8. It may well be that the publication of the alleged offending material could have defamed the claimant but this Court does not have jurisdiction to hear defamation claims which accrue in absence or after the cessation of employer- employee relationship. Therefore assuming the claimant were right that the cause of action accrued in March, 2011 when she came across the offending publication, this Court would have no jurisdiction to hear such a claim.

9. In conclusion the preliminary objection succeeds and the suit is hereby struck out with costs.

10. It is so ordered.

Dated at Nairobi this 19th day of June 2015

Abuodha J. N.

Judge

Delivered this 19th day of June 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge