



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1467 OF 2010

PETER OWINO ALOO.....CLAIMANT

VERSUS

TELKOM KENYA LIMITED.....RESPONDENT

RULING

1.The respondent herein has raised as preliminary, the objection that the cause of action herein having accrued in September, 2007 when the Claimant's appeal from the decision of the respondent's disciplinary committee to dismiss him was disallowed and the dismissal upheld, the suit as filed is incompetent on the grounds that the same is statute barred by virtue of section 90 of the Employment Act.

2. As has been held by the Court in applications of this nature, only action based on tort are capable of extension of time to file suit after the lapse of limitation period. Whereas Section 4(1) of the Limitation of Actions Act sets the limit for bringing actions founded on contract to six years with no option for extension, limit for contracts of employment are set by section 90 of the Employment Act to 3 years. The Court is denied the discretion to extend this period by the wording of the section itself which is couched in mandatory terms.

3.The case before me is slightly different and presents very unique circumstances. By the time the cause of action accrued in September, 2007, the applicable statute of limitation was Limitation of Actions Act which set the time limit for bringing actions founded on contract to six years. The reduction of this period to three years started in October, 2008 when the current Employment Act came into force.

4.The provisions of the current Act therefore can only apply to causes of action that accrued after its commencement. Legislation more often than not affect and or modify rights and obligations of persons affected by it hence if there was intention that it applies retrospectively such intention ought to be expressly stated in such legislation since retrospectivity by implication can occasion grave injustice.

5.If the cause of action in this matter accrued in September, 2007 when his appeal was dismissed, his right to challenge his dismissal would become extinguished in September, 2013. This suit was filed on 1st December, 2010 hence was still within the stipulated limitation period.

6. The preliminary objection is therefore overruled and the suit shall proceed to full trial on merit.

7. It is so ordered.

Dated at Nairobi this 31st day of July 2015

Abuodha J. N.

Judge

Delivered this 31st day of July 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge