



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 69 OF 2014

SAMUEL LANGAT

CLAIMANT

v

KIJABE LIMITED

RESPONDENT

RULING

1. For determination is a Preliminary Objection raised by Kijabe Ltd (Respondent) through a notice filed in Court on 20 May 2015 to the effect that the claim herein is time barred and is also an abuse of the process of Court.
2. But a brief background first. Samuel Langat (Claimant) filed a Memorandum of Claim in Court on 30 June 2014 alleging unlawful dismissal and seeking various relief including statutory entitlements accruing from the employment relationship.
3. In the Memorandum of Claim, the Claimant pleaded that he was summarily dismissed in 1997. The exact date and month were not disclosed. The witness statement also cited 1997 as year of dismissal without outlining the date and month.
4. After service of Notice of Summons, the Respondent filed the Notice of Preliminary Objection but did not file a Response.
5. In its submissions in support of the Preliminary Objection, the Respondent contended that the cause of action as pleaded accrued in 1997 and that pursuant to the Limitation of Actions Act, the claim should have been commenced within 6 years, or by 2003 latest but instead it was filed on 30 June 2014, 14 years outside the allowed time.
6. The Respondent cited case of *Michael Maina Nderitu v Kenya Power & Lighting Co. Ltd* (2013) eKLR where Nduma J held that the Court lacked jurisdiction to entertain a claim which is statute barred and *Fred Mudave Gogo v G4S Security Services(K) Ltd* (2014) eKLR where Mbaru J held that limitation is not merely a technical but also a substantial/fundamental issue
7. In reply, Mr. Gakinya for the Claimant urged that the claim was based on trust and therefore it could not be defeated by a plea of limitation. According to Mr. Gakinya, the Respondent was holding the Claimant's monies accruing out of the employment relationship in trust and so the preliminary objection was misplaced.
8. The Claimant suffered an actionable wrong in 1997 when he was summarily dismissed. The cause of action therefore accrued in 1997. The primary statute dealing with limitation at the material time was the Limitation of Actions Act.
9. Section 4(1) of the Act provided for a limitation of 6 years in contractual claims. Employment relationships are contractual in nature and therefore the said section was implicated.
10. The Claimant should have commenced legal action latest by end of 2003. He instead commenced action in 2014, some 13 or so years late.
11. Without a doubt the cause of action was statute barred and limitation is not just a technical issue

but a jurisdictional issue. Without express statutory provision for extension of time/grant of leave to commence such actions, the Memorandum of Claim cannot survive.
12.The Court therefore upholds the preliminary objection and strikes out the Memorandum of Claim filed herein with an order that each party bears own costs.

Delivered, dated and signed in Nakuru on this 24th day of July 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Gakinya instructed by Hari Gakinya & Co. Advocates

For Respondent Mr. Njuguna instructed by P.K. Njuguna & Co. Advocates

Court Assistant Nixon