



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 694 OF 2013

CLARICE ODHIAMBO.....CLAIMANT/RESPONDENT

VERSUS

THE COCA-COLA COMPANY.....1ST RESPONDENT/APPLICANT

COCA-COLA EURASIA & AFRICA GROUP.....2ND RESPONDENT/APPLICANT

(Successor in title to Coca-Cola Africa Group)

COCA-COLA CENTRAL, EAST & WEST

AFRICA BUSINESS UNIT LIMITED.....3RD RESPONDENT/APPLICANT

(Successor in title to Coca-Cola East and Central Africa Division Ltd)

RULING

1. The Respondents/Applicants notice of motion application dated 22nd October 2014 prays for the following orders:-

1. THAT the Industrial Court has no jurisdiction to hear and determine the suit and make any of the orders prayed for in the Memorandum of Claim as the same are statute barred by Section 4(1)(a) of the Limitation of Actions Act.
2. THAT the costs of this application and the entire suit be borne by the Claimant.

2. The Respondents/Applicants premised their application on the grounds on the face of the motion as well as the affidavit of Antoinette Absaloms sworn on 23rd October 2014 in support of the motion. The grounds relied on were as follows:-

1. The Claimant was declared redundant from her employment with the 3rd Respondent and was informed *vide* letter dated April 12th 2007 and May 15th 2007 that her termination date from employment was April 30th 2007.

2. The Claimant herein was at all times aware that her last date of employment was April 30th 2007 and she acknowledged this fact in various correspondence.
3. The Claimant's suit is therefore statute barred under the provisions of the Limitations of Actions Act, 2007 which provides that the limitation period for disputes founded on contract is 6 years.
4. The Third Respondent will suffer great prejudice and hardship in procuring documentation should the suit be set down for hearing. In addition, it does not have any witnesses in its employment who can testify in this matter.
5. This suit is an abuse of the court process and should be struck out with costs.

3. The Claimant/Respondent was opposed and filed a Replying Affidavit dated 15th December 2014 and a Further Affidavit on 5th June 2015. She also placed reliance on her Memorandum of Claim and Verifying Affidavit dated 15th May 2013 and the three bundles of documents dated 15th May 2013, 5th June 2013 and 24th October 2014.

4. The parties filed written submissions and made oral submissions before me. Mrs. Opiyo appeared for the Respondent/Applicant while Miss Kilonzo appeared for the Claimant/Applicant.

5. The Respondent/Applicant's written submissions were filed on 7th April 2015. The submissions are to the effect that the entire suit is statute barred by virtue of Section 4(1) (a) of the Limitation of Actions Act. Mrs. Opiyo submitted that it is not in dispute that the Claimant herein was terminated in the year 2007 prior to the enactment of the current Employment Act and that the applicable law is therefore the repealed Employment Act and the applicable law on limitation of actions is consequently section 4(1) of the Limitation of Actions Act. The Respondent submitted that Section 4(1) of the Limitation of Actions Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued. The Respondent submitted that the main issue in dispute between the parties is the date upon which the cause of action accrued and consequently when the limitation period lapsed. The Respondent submitted that in addition, another major issue in dispute is the effective date of termination. The Respondent's contention is that the Memorandum of Claim is statute barred by virtue of Section 4(1) of the Limitation of Actions Act and that consequently this Court does not have jurisdiction to hear and determine this suit. The Respondent/Applicants submit that the statute that governed the employment relationship between the Claimant and the Respondent is the repealed Employment Act. The Respondent sought to have the effective date of termination and accrual of cause of action determined and submitted that clause 1 of the letter dated 15th May 2007 sets the termination date as 30th April 2007. The Respondent submitted that clause 2 made provision for the calculation of salary & benefits based on the termination date of 30th April 2007 while under Clauses 4 & 5, leave days were to be calculated in reference to the said termination date and the Claimant's severance calculation was tabulated up to 30th April 2007. The Respondent submitted that in the Claimant's email dated 30th April 2007, she admitted that a few hours after receipt of her letter she was already out of the Respondent's internal I.T system. The Respondent submitted that similarly, the Claimant's Certificate of Service dated May 15th 2007 refers to 30th April 2007 as the effective date of the Claimant's termination from employment. The Respondent submitted that the Claimant has alleged that the letter of 15th May 2007 purported to backdate the termination date and stated that this allegation is factually and legally incorrect as the termination date had always been 30th April 2007 and the Claimant was aware of the same even before the said date. The Respondent relied on the cases of **Hilarion Mwabolo v Kenya Commercial Bank [2013] eKLR** and **Elinathan Kitiro Mwamburi v Telkom (K) Limited [2014] eKLR** the Court held that "*termination kicks in from the date stated in the letter of termination*". The Court held that the cause of action in a claim emanating from an employment relationship takes effect from the date of termination as stated in the letter of termination. The Courts in **Hilarion Mwabolo v Kenya Commercial Bank (supra)** and **Jeremiah Ojwang Ojak v Central Bank of Kenya Cause No. 1467 of 2011 (unreported)** cited with approval the Court of Appeal in **Gathoni v Kenya Cooperative Creameries Ltd. [1982] 2 KLR 104** to the effect that 'The law on limitations of actions is intended to protect defendants against

unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.’ The Respondent submitted that pursuant to the numerous decisions on the effective date of termination, 30th April 2007 is therefore the operative date of termination. The Respondent stated that in accordance with the above cited cases, the date of receipt of a termination letter is not the material date that determines when a cause of action accrues. The Respondent/Applicant cited the case of **Benjamin Wachira Ndiithi v Public Service Commission & Another [2014] eKLR** where the Industrial Court upheld the Court of Appeal decision in case of **Thuranira Karauri v Agnes Ndeche [1997] eKLR** in holding ‘that the issue of limitation goes to jurisdiction and whenever it is raised, the Court must deal with it before proceeding any further and even in the current constitutional dispensation, parties must come to court in time.’ *The Respondent thus submitted that consequently, this Court lacks jurisdiction to hear and determine the suit on account of it being time barred under Section 4(1) of the Limitation of Actions Act.* Once a suit is held to be time barred, the Court cannot proceed to enquire into the merits of the case. Reliance was placed on the case of **Bata Shoe Company (K) Limited v Laban Chema Libabu [2013] eKLR** where the Industrial Court cited with approval the Court of Appeal decision in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1** where the Court of Appeal held that ‘*Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.*’ The Respondent submitted that the effective date of termination as stated in the Notice of termination determines when the cause of action begins to accrue and that the Court has no discretion or power to extend time with regards to claims arising from employment contracts to cover the period of 15 days outside the 6 year statutory period. The Respondent/Applicant submitted that no reason for the delay has been given and the Claimant was guilty of laches and should not be assisted. Mrs. Opiyo relied on the case of **Elinathan Kitiro Mwamburi v Telkom (K) Limited [2014] eKLR** where Ndolo J. held that in determining when the cause of action accrued, reference is made to the date of termination indicated in the letter. She also relied on the case of **Isaiah Ambale Lukwili v Red Lands Roses Limited Misc. Appl. 112 of 2014 (unreported)** where Nduma J. held that the statute of limitation serves a good purpose so that disputes are filed in good time to enable parties deal with them. Mrs. Opiyo stated that the Claimant’s dues were forwarded to the Claimant and the Claimant did not bank the cheque and the Claimant is free to get her cheque for final dues if she so wishes. She submitted that nothing would have prevented the Claimant from receiving the cheque and banking it on account. Finally, Mrs. Opiyo submitted that the issue of discrimination or entrapment or notice to labour officer are not material to the date the cause of action accrued.

6. The Claimant/Respondent was opposed and Miss Kilonzo submitted that the Claimant relied on the memorandum of claim dated 15th May 2013, the bundle of documents filed contemporaneously with the claim, a bundle of documents filed on 5th June 2013 and 14th October 2014 as well as the replying affidavit of 15th December 2014 and the further affidavit of 5th June 2015 and list of authorities of 1st April 2015 and 5th June 2015. The Claimant/Respondent filed submissions on 2nd April 2015 and further submissions on 5th June 2015. In her submissions the Claimant submitted that the applicable law to the issues at hand and her claim is the (Repealed) Employment Act and not the Employment Act 2007 and that the Claimant/Respondent received notice of her redundancy on 16th May 2007 and therefore this is the date her cause of action arose. That on 16th May 2007, the applicable limitation of time for employment contracts was six years under the Limitation of Actions Act and that the Claimant/Respondent’s claim was filed within 6 years of 16th May 2007 and thus the Claimant/Respondent’s claim is not time barred. Miss Kilonzo submitted that the Claimant/Respondent was dismissed on 16th May 2007 through a letter dated 15th May 2007 after working for the Respondent/Applicant for a period of ten years. When the Claimant/Respondent was dismissed, the applicable law was the Repealed Employment Act and under the repealed statute, the Limitation of Actions Act applied to any claim arising from breach of an Employment contract. She submitted that the law provided that the claim ought to have been filed within 6 years. The Claimant submitted that the commencement date of the Employment Act 2007, was 2nd June 2008 and Section 90 of the Employment Act 2007 provides for a limitation period of three years. Accordingly, since the Claimant/Respondent received notice of her dismissal in 2007, the Claimant/Respondent submits that the applicable limitation

period on the date she was dismissed was that under the Repealed Employment Act. She submitted that as was held in the case of **Kenshavan Madhava Menon V. The State of Bombay [1951 AIR 128 1951 SCR 228]** by the Supreme Court of India, the Constitution cannot operate retrospectively to void liability incurred under a law that was in force prior to the promulgation of the Constitution. The Claimant/Respondent further submitted that the cardinal principal in regard to retrospective application of legislation is that where legislation affects substantive rights, it cannot have retrospective operation and that her Claim is substantive and not procedural. The Claimant submitted that there is no provision in the Employment Act 2007 that expressly or impliedly provides that the provisions therein are retrospective and that any retrospective, application of the (Repealed) Employment Act would prejudice the Claimant's vested rights under the contract of employment.

The Claimant/Respondent submitted that the Respondent/Applicants position is that the date the Claimant/Respondent was declared redundant is 30th April 2007. It is the Claimant/Respondent's position that she was given notice of her redundancy on 16th May 2007 and the notice of redundancy was in the letter dated 15th May 2007. The Claimant/Respondent submitted that the letter dated 15th May 2007 had two dates of redundancy - 30th April 2007 and 15th May 2007 and that the letter stated that the Claimant/Respondent had not accepted the Respondent/Applicants' offer for voluntary separation in the letters dated 27th April 2007 and 3rd May 2007. The Claimant/Respondent submitted that she did not receive the letters dated 27th April 2007 or 3rd May 2007 and that the alleged letter of 3rd May 2007 negates the date of 30th April 2007 as the date of termination of the Claimant/Respondent. Since it was received on 16th May 2007, the Claimant/Respondent submits that the effect of the first date (30th April 2007) was to backdate her redundancy and the law does not permit the back dating of a statutory notice. The Claimant cited **Black's Law Dictionary**, and stated that Notice is defined to include:

7. Legal notification required by law or agreement or imparted by operation of law as a result of some fact;

8. A person has notice of a fact or condition if that person has actual knowledge of it or has received information about it. The Claimant submitted that in this case, the notice of redundancy was a matter of the operation of the law; it is not a question of the Respondent/Applicant's unilateral interpretation or imposing it and stated that the circumstances prior to 15th May 2007 support the Claimant/Respondent's submissions that she only received notice on 15th May 2007 that she had been declared redundant; not earlier. In an email dated 10th April 2007, the Respondent/Applicant communicated internally a decision that they were undergoing a difficult separation process with the Claimant/Respondent and the decision by the Respondent/Applicants was not communicated to the Claimant/Respondent. The Claimant submitted that on 11th April 2007, the 2nd Respondent/Applicant gave the Claimant a list of jobs to apply for and on 12th April 2007 the 2nd Respondent/Applicant advised the Claimant/Respondent that they would provide her with information on the vacancies she had an interest in. She submitted that on the same day, that is 12th April 2007, the Respondents wrote the letter with the proposed voluntary separation offer and the Respondent/Applicants kept this letter until 27th April 2007. It is this letter that the Applicants cling on as evidence of the purported redundancy date of 30th April 2007. The Claimant/Respondent submitted that the Respondent/Applicants continued to give her assurances that there remained possibilities for her to secure an alternative position. The Claimant/Respondent submitted that the letter dated 12th April 2007 was only a proposed offer and contained a section for her to sign to signify her acceptance and she did not sign the letter or accept the offer because of the Respondent/Applicants' refusal to respond to her request for clarifications. The Claimant/Respondent submitted that she continued to access her offices up until the end of day on 15th May 2007. The Claimant/Respondent submitted that the Respondents letter dated 12th April 2007 received on 27th April 2007 offered the Claimant/Respondent a voluntary separation payment of Kshs. 19,113,945.55 and this was reduced to Kshs. 6,817,524.75 in the letter dated 15th May 2007 and to date the Respondent/Applicants have not made any severance payments to the Claimant/Respondent. The Claimant/Respondent submitted that a cause of action arising from redundancy arises when notice of redundancy is given. The letter dated 12th April 2007 was subject to the acceptance of the

Respondent/Applicants and the Claimant/Respondent and neither signed it. She submitted that it required the consent of both parties to become effective. The Claimant submitted that the email dated 30th April 2007 from the Respondent/Applicants to the Claimant/Respondent gave no notice of redundancy and merely indicated an intention to commence the process. She submitted that the email stated that 'These are simply the terms under which we are prepared to reach a voluntary (and more generous than statutorily required) separation agreement with you. If you are unable to accept by then we will assume that you wish not to enter into such an agreement and we should instead proceed with an involuntary separation'. The Claimant submitted that Section 40 (1) of the Employment Act 2007 allows an employer to terminate the contract of an employee by declaring them redundant and relied on the case of **Aviation & Allied Workers Union v. Kenya Airways Limited & 3 Others [2012] eKLR** in which reference was made to the sentiments of Rawal J. (as she then was) in **Lucas O. Ondonya & 43 Others v Rift Valley Railways Kenya Limited, in H.C.C.C No.33 of 2009** that 'The employer under the Employment Act No. 11 of 2007 has the right to terminate the services of an employee by declaring him redundant.' The Claimant submitted that a key requirement under this section is the issue of notices and stated that submitted that procedural fairness in a redundancy process is as important as the substantive justification. Fair procedure involves notification of the employee, and a labour officer of the intended redundancy and giving reasons for the extent of such redundancy. This procedure was evaluated in the case of **Thomas De La Rue (K) Ltd v Opindo Omutelama [2013] eKLR** and also restated in the case of **Kenya Union of Journalists & Allied Workers v Nation Media Group Limited [2013] eKLR**. Further reliance was placed on the case of **Banking Insurance and Finance Union v. CFC Stanbic Bank [2013] eKLR** on the proper procedure to be followed in redundancy. The decision made reference to the case of **Francis Maina v Lee Construction [2013] eKLR** where the Court held that a redundancy that ignores the conditions under Section 40 of the Employment Act amounts to unfair termination within the meaning of Section 45 of the Act. The Claimant/Respondent submitted that in the Respondent/Applicants' further affidavit sworn by Antoinette Abasaloms on 20th January 2015 under paragraph 3 states that the Respondent/Applicants made a decision to terminate the Claimant earlier than 30th April 2007. The Claimant submitted that this decision whenever it was made, was communicated on 15th May 2007. The Claimant/Respondent further submitted that her contract of employment was terminated on 16th May 2007, the date when she received a declaration and notice of her redundancy, and not 30th April 2007. She submitted that her cause of action arose when she was notified of the decision of the Respondent/Applicants and not when they internally made it. Compliance with proper procedures in redundancy by employers is mandatory and non-compliance is fatal as was restated by the Court in the case of **Joseph Tama Ndua & 11 Others v Jacaranda Hotels (Msa) Limited T/A Jacaranda Indian Ocean Beach Resort [2014] eKLR**. Reliance was placed on Section 16A of the (Repealed) Employment Act which provided that a contract of service would not be terminated on account of redundancy unless the labour officer in charge of the area in which the employee is employed was notified of the reasons for, and the extent of the intended redundancy. The Claimant/Respondent submitted that redundancy and voluntary separation are diametrically different and that redundancy is involuntary separation. The Claimant submitted that the Respondent/Applicants gave a proposed offer of voluntary separation on 27th April 2007 through the letter dated 12th April 2007 and after the proposed offer for voluntary separation was not accepted by the Claimant/Respondent, the Respondent/Applicants then gave notice of involuntary separation on 16th May 2007 through the letter dated 15th May 2007. The Claimant submitted that the date of the notice of redundancy given to the Claimant/Respondent cannot be backdated in fact or in law. She relied on the case of **Kenya Petroleum Oil Workers Union v Gas & Diesel Ltd & Another Cause No. 1092 of 2010**, where the Court held that a proper basis must be laid for a court to declare and find there is redundancy and that mere allegation of redundancy was insufficient. The Claimant also relied on the case of **Esther Wangari Kinyua v Nairobi Afrigas Distributers (K) Limited Cause No. 174(N) of 2009** where the Industrial Court held that where an employee was declared redundant written notice of one month had to be given and copied to the labour officer where the employee had an office. Miss Kilonzo submitted that Section 16A(1)(a) provides that one of the conditions in declaring redundancy is that notice be given and notice be given to a labour officer indicating the extent and reason for redundancy. She submitted that the Respondent/Applicant had not met the provisions of the law in the termination and had admittedly not even paid the redundancy dues.

9. Mrs. Opiyo submitted in her reply that the facts of this case fall squarely within the decisions the

Respondent/Applicant had presented to Court. She submitted that the case law is that the cause of action is taken to be from the date indicated in the letter and that there was no ambiguity in the letter dated 15th May 2007 and that the calculations were based on 30th April 2007 and this was a common thread running through the correspondence. She submitted that there was no issue of backdating the redundancy and that initially there is the initial notification and thereafter consultations then the final notice and that is why she had referred the Court to the notification in February and the letter of 15th May 2007 which indicates the termination date. She submitted that the Court should note there were statutory deductions of tax to be made in relation to the final dues and that is the figure reflected in the final affidavit and captured on paragraph 4 of the letter of 15th May 2007. She stated that reference was made to Section 16 of the repealed Employment Act and submitted that Section 16A(1)(e) provides that the employee is entitled to one month's notice or one month's salary in lieu of notice. She submitted that the Claimant was entitled to 3 months salary in lieu of notice and this was in line with law. She submitted that the cases cited by the Claimant/Respondent were not relevant to the issue at hand as they refer to the Employment Act 2007 and not the repealed Employment Act.

10. The dispute before me is on limitation of actions. The Claimant was terminated in 2007 and the applicable law was the Repealed Employment Act. The statute did not have a provision on the issue of limitation of actions unlike the present Employment Act 2007 which has an express provision under Section 90. The limitation of the cause of action herein was therefore under Section 4(1) of the Limitation of Actions Act. That is not in contest. What is contested is the date of accrual of the cause of action. The Respondent submits that the date of termination was 30th April 2007 and therefore the cause of action accrued then. Applying simple arithmetic the lapse of the cause of action would be 6 years from that date that is 30th April 2013 as reckoned by the Respondent/Applicants. The Claimant/Respondent on the other hand submits that the date of accrual of the cause of action was the date she was notified of the termination of her contract and that was 16th May 2007. By simple arithmetic, the date of expiry of her cause of action would be 6 years later, that is, 16th May 2013. The suit herein was filed on 15th May 2013.

11. The employer of the Claimant represented by the 3rd Respondent/Applicant, its successor in title, wrote a letter dated 12th April 2007 in which the employer proposed various terms of a voluntary separation. In the letter, the termination date was stated to be as follows:- 'Subject to the terms of this letter, your employment shall terminate by reason of voluntary separation on 30th April, 2007 (the "Termination Date"). Your current terms and conditions of employment shall continue to apply up to the termination date.

12. The letter gave indication that notice pay of 3 months salary in lieu of notice would be paid and the voluntary severance package would be Kshs. 19,113,945.55 and the sum would be paid within 3 working days of 14th May 2007 by direct payment into the Claimant's bank account. There was indication of an amount on outstanding leave entitlement and the Claimant's medical plan was to run till 31st December 2007. The letter was unsigned either by the author Josephine Mbithi the Human Resources Director and Clarice Odhiambo the Claimant. The employer subsequently authored a letter dated 15th May 2007. It was a letter that communicated the termination of the Claimant's employ with the Respondent. The letter provided as follows (in part) 'I refer to the previous discussions you have had concerning your role with Coca-Cola East & Central Africa Limited, (the Company) being potentially redundant as a result of the Company's operational requirements the details of which have been discussed and shared with all associates. I also refer to the consultation process that was undertaken by the Company where your proposed redundancy and any suitable alternative employment for you were discussed and explored. Regrettably, we are unable to find you any suitable alternative employment and I am therefore writing to confirm that, subject to any other alternative employment becoming available in the meantime (in which case we shall notify you as soon as possible), your role within the Company will become redundant effective the date of this letter.

As you have not accepted the Company's offer of voluntary separation as provided for in our letters dated April 27, 2007 and May 3, 2007, we are now proceeding with separation in accordance with statutory

requirements and as set out in this letter. (emphasis mine)

Subject to the terms of this letter, your employment has terminated by reason of redundancy on April 30, 2007 (the "Termination Date"). Your then existing terms and conditions of employment continued to apply up to the Termination Date.

13. The letter like the previous one dated 27th April 2007, set out the payment of notice – 3 month's salary in lieu of notice, the separation package was Kshs. 6,817,524.75. Leave pay of Kshs. 1,114,542.55 was included and a deduction of Kshs. 427,001.79 made for the balance of purchase price for a Subaru Legacy bought from the Company in September 2001. The Claimant was required to keep trade secrets and she was restricted under the confidentiality agreements applicable.

14. The Respondent asserts that the retention of the termination date of 30th April 2007 meant that the Claimant could not have a cause of action beyond the 6 year limitation period set under Section 4(1) of the Limitation of Actions Act and that the Court cannot extend time. It is true as submitted by Mrs. Opiyo for the Respondents that the time for filing a cause of action is 6 years under the regime of the Repealed Employment Act. It is also true the Court cannot extend time as has been held in the cases cited by the Respondent.

15. The Court of Appeal in **Divecon v Samani (1995-1998) EA 48** has deliberated on the issue of extension of time and given the definitive and binding position on the same. Though the cause of action in the **Divecon** case was based on tort, the Court of Appeal graciously went ahead to consider the grant of leave or extension of time in respect of causes of action based on contract. The Court of Appeal stated as follows:-

....to us, the meaning of the wording of section 4(1) is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action. A perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that "the wording of section 4(1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked".

16. The repealed Employment Act provided under Section 16A as follows:-

16A. (1) A contract of service shall not be terminated on account of redundancy unless the following conditions have been complied with -

(a) the union of which the employee is a member and the Labour Officer in charge of the area where the employee is employed shall be notified of the reasons for, and the extent of, the intended redundancy;

(b) the employer shall have due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(c) no employee shall be placed at a disadvantage for being or not being a member of the trade union;

(d) any leave due to any employee who is declared redundant shall be paid off in cash;

(e) an employee declared redundant shall be entitled to one month's notice or one month's wages in lieu of notice;

(f) an employee declared redundant shall be entitled to severance pay at the rate of not less than 15

days pay for each completed year of service as severance pay.

(2) For purposes of this section -

"trade union" means a trade union registered under the Trade Union Act (Cap 233) and

"redundancy" has the meaning assigned to it in section 2 of the Trade Disputes Act (Cap 234).

17. The Respondents wrote a letter to the Claimant in which the date of termination was given as 30th April 2007. The letter was dated 15th May 2007. The decisions by Ndolo J. in **Hilarion Mwabolo v Kenya Commercial Bank** (supra) and **Elinathan Mwambiro v Telkom (K) Ltd** (supra) differ somewhat from this case in that in those cases the date of termination as not backdated.

18. The letter communicating the termination of employment communicated a date that was past. The date of 30th April 2007 was the proposed termination date under the voluntary separation and could not therefore be the date of the involuntary separation made on 15th May 2007. The accrual of the cause of action is when all the facts that can precipitate a suit are in place. The Claimant could not sue on the intended redundancy but could sue on the termination communicated on 15th May 2007. The suit filed on 15th May 2013 was filed in time and therefore is rightfully before the Court. As noted in precedents cited the Court cannot exercise jurisdiction it does not have. In this case there is jurisdiction as the suit was filed on the last date since accrual of cause of action.

Orders accordingly.

Dated and delivered at Nairobi this 28th day of **October** 2015

Nzioki wa Makau

JUDGE