



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 686'B' OF 2014

JAMES MURUGA RUO CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION RESPONDENT

Mrs Kaluai for Respondent / Objector

Mr Oyieko for Claimant

RULING

1. The Respondent filed a preliminary objection on grounds that the Memorandum of claim dated 29th April 2014 and filed on the same date is time barred in that the Claimant avers in paragraph 8 of the memorandum of Claim that he was dismissed from employment on 15th September 2006 and has brought this suit more than seven (7) years from the date the cause of action arose.
2. The Claimant did not appeal to the Disciplinary Committee within the stipulated period but he wrote on 6th July 2007 requesting for an appeal.
3. The Respondent responded to the request on 29th August, 2007, refusing the appeal.
4. The internal process therefore closed on 29th August 2007 and the suit ought to have been filed within six (6) years from the date the cause of action arose in terms of Section 4(1) of the Limitation of Actions Act, Cap 22 of the Laws of Kenya, since the Employment Act, of 2007 had not come into operation then.
5. The Claimant submits that he was charged with a criminal offence arising from the allegations that led to his dismissal and in particular that he had sexually assaulted a student in the course of his employment being a teacher.
6. The Claimant was however acquitted by the Senior Resident Magistrate Court at Kangema in Criminal Case No. 934 of 2006 on a technicality in terms of Section 210 of the criminal procedure code on 23rd March 2007.
7. There is no doubt that the suit was filed more than six (6) years from the date the Claimant was dismissed from employment and the right of internal Appeal exhausted.
8. The right to file a suit accrues once the internal appeal process provided at the work place has been exhausted. Time starts to run from that date and not from the date the initial dismissal was effected. However in the present case this difference does not matter because the case was filed more than six (6) years from the date of dismissal and more than six (6) years from the date the Claimant was acquitted by the Resident Magistrate's Court on a criminal charge arising from the same allegation for which he lost his employment.
9. The Court of Appeal in **Civil Appeal No. 142 of 1997**, per **Kwach, Akiwuni & Pall JJA**, was very clear that Cap 22 does not provide for extension of time for actions based on contract after the lapse of the limitation period of six (6) years and went on to say

“it means that no one shall have the right or power to bring after the end of six (6) years from the date on which a cause of action accrued, an action founded in 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 based in contract six (6) years after the cause of action arose or any application to extend such time for the bringing of the action.”

10. This decision is still good law and the Court is bound by it except for matters that were filed after the Employment Act, 2007, came into operation in June 2008. Limitation with regard to such matters is governed by Section 90 of the Employment Act, 2007 which has altered the limitation period to three (3) years with exceptions.
11. The preliminary objection is upheld with the result that the entire suit is dismissed with costs.

Dated and Delivered at Nairobi this 23rd day of October, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE