



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1908 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 19th October, 2015)

BETTY N. LUSALACLAIMANT

VERSUS

RELI CO-OPERATIVE SAVINGS AND CREDIT SOCIETY RESPONDENT

RULING

1. The Respondents herein have raised a Preliminary Objection concerning this case dated 18/10/2014 that:
 1. ***The suit is bad in law, an abuse of the Court process and offends the provisions of the Employment Act 2007 and the Limitation of Actions Act Cap 22 Laws of Kenya and should be struck out with costs to Respondent.***
 2. ***The suit is time barred therefore this Honourable Court lacks jurisdiction to entertain it.***
2. The Respondents have submitted that the Claimant brought a claim against the Respondent vide a Memorandum of Claim dated 28th November 2013 and filed on 5th December 2013 claiming severance pay for the period she served as an employee of the Respondent. She stated that the Respondent owed her Kshs.535,200/= being the severance pay for the years she worked for Respondent having retired on 1st February 2005. The Respondent in return filed a Respondents Memorandum of Respondent dated 20th January 2014 and denied the Claim and also indicated in paragraph 4 of the response that the suit was also time barred.
3. The Respondent have argued that the Claimant having retired in 2005, the applicable law is the Employment Act Cap 226 Laws of Kenya and the Trade Disputes Act Cap 234 Laws of Kenya which the Respondent have submitted is silent on the issue of time within which a labour and/or employment dispute should be filed in Court. They submitted that the next point of reference is Cap 22 Limitation of Actions Act whose Section 4 provides that a cause of action founded on contract should not be brought after 6 years.
4. The Respondents have also submitted that the cause of action having occurred on 1st February 2005, when the Claimant retired, the Claimant should have instituted the suit on 6th December 2011 yet she instituted it on 5th December 2013 which is 8 years 9 months hence being time barred.

5. The Claimant opposed this Preliminary Objection. They filed their grounds of opposition on 15/1/2015. They submitted that the Respondent having voluntarily submitted themselves to the jurisdiction of this court are estopped from claiming lack of jurisdiction one year after filing their defence.
6. The Claimant have also submitted that by their own conduct during the pendency of this case, the Respondent are now estopped from denying that the Court has jurisdiction to hear the case, they themselves having appeared in Court to seek adjournment when the case came up for hearing and never raised any objection as to the jurisdiction of this case.
7. They aver that the application raises counter to the need for expeditious disposal of cases and is only meant to delay justice and cause prolonged suffering to the Claimant.
8. The Claimant have also submitted that when the Claimant wrote to the Respondent on 17/5/2013 indicating she was going to take Counsel to pursue legal action, the Respondent replied stating that the matter was being looked into. The Respondents therefore pleaded estopped stating that the Applicants are estopped from pleading limitation given the promise they had made to the Claimants to look into the matter.
9. I have considered the averments by both parties. On issue of jurisdiction I find that the submissions of the Respondent is without merit as the Employment and Labour Relations Court is the Court with jurisdiction to handle cases related to employee- employer relations by virtue of Section 12 of Industrial Court Act and Article 162(2) of the Constitution of Kenya 2010.
10. However in terms of limitation, it is apparent that the cause of action arose in 2005 February when the Claimant was retired. She filed her case in December 2013 which is way beyond the 6 years limitation period provided in Cap 22, the cause of action having occurred during the pendency of the old labour laws i.e. Employment Act Cap 226 (now repealed). I agree with the Respondents that his matter is time barred accordingly and I struck it out with costs of the Respondents.

Read in open Court this 19th day of October, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Gitau for Applicant – Present

No appearance for Respondent