



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 502 OF 2011

DAVID TARUS SAMOEL.....CLAIMANT

VERSUS

NATIONAL HOUSING CORPORATION.....RESPONDENT

RULING

1. The respondent in this suit raised as preliminary an objection that the suit herein is statute barred by virtue of section 90 of the Employment Act.
2. According to the respondent, the claimant was terminated from employment on 13th December, 2007 hence the present claim challenging the termination ought to have been filed by 13th December, 2010. Therefore the present action having been filed on 2nd June, 2011 is incompetent and the Court has no jurisdiction to entertain the same.
3. The claimant in opposing the objection argued that the respondent had done a selective reading of the claimant's claim since at paragraph 6 the claimant averred that on 11th February, 2008 the claimant appealed against his unlawful termination to the Managing Director, of the respondent but the Appeal was never heard or determined nor was any decision of the Board communicated to him. According to the claimant the respondent never denied this averment.
4. The claimant further submitted that section 90 of the Employment Act should be read in its entirety since the question the Court requires to decide was whether the failure to hear an appeal lodged by the claimant amounted to a continuing injury.
5. Section 90 of the Act limits to three years, the period within which an action arising or based on the Act or contract of service generally may be brought. However, for continuing injuries, these must be brought within 12 months next after cessation thereof.
6. The claimant's services were terminated on 13th December, 2007. He made his appeal to the Managing Director on 28th April, 2008. The respondent's Managing Director responded to the appeal by a letter dated 18th November, 2008. By a letter dated 22nd October, 2009 the claimant wrote to the Permanent Secretary, Ministry of Housing seeking his intervention over the matter. Whereas in the letter to the Permanent Secretary – Housing, the claimant avers that he had written four letters which had not been responded to by the respondent's Managing Director, he seems to make no reference to the letter dated 18th November, 2008 by the respondent's Managing Director either by way of reply to the memorandum of response or submission in opposition to the

preliminary objection.

7. Further the claimant did not bring to the attention of the Court any provision either in his contract of employment or the respondent's human resource manual that permitted further appeal to the Permanent Secretary. Assuming therefore that the letter dated 18th November, 2008 was the respondent's final communication on the issue, the claimant ought to have commenced the present claim within 3 years from the end of November, 2008 allowance being made for postal delays. For that reason the time would therefore lapse on 30th November, 2011. This matter was filed on 4th April, 2011 hence was still within the 3 year period stipulated under section 90 of the Employment Act. The objection is therefore overruled and the suit shall proceed to trial on merits.

8. It is so ordered.

Dated at Nairobi this 2nd day of October 2015

Abuodha J. N.

Judge

Delivered this 2nd day of October 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge