



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 141 OF 2015

MICHAEL MWANGI GACHERU

CLAIMANT

v

COUNTY GOVERNMENT OF NAKURU

RESPONDENT

RULING

1. The Claimant commenced legal proceedings against the Respondent on 18 May 2015 and he stated the issues in dispute as
 - a) Unfair termination and/or wrongful dismissal
 - b) Notice
 - c) Leave for 20 years
 - d) Unpaid salary for 6 months
 - e) Unpaid salary for 2 months during suspension
 - f) General damages for loss of employment.
2. When the Memorandum of Claim was served upon the Respondent it filed a Notice of Preliminary Objection on 26 June 2015 to the effect that the suit was statute barred for contravening Section 90 of the Employment Act, was *res judicata* and was incompetent, scandalous and vexatious.
3. On 21 July 2015, the Respondent filed a Response wherein limitation was raised again.
4. The preliminary objection was taken on 21 July 2015.
5. The Respondent submitted that the cause of action offended section 90 of the Employment Act and Section 4(1) of the Limitation of Actions Act because the cause of action accrued with dismissal in 1997 and it had been commenced after 15 years (in 2015).
6. The Respondent also submitted that although the Public Service Commission reinstated the Claimant after an appeal, it was conditional and that the Claimant had not complied with the conditions.
7. Lastly, the Respondent submitted that the suit was *res judicata* because the issues had been determined in a ruling in Nakuru CMCC No. 2354 of 1999.
8. In response, it was submitted on behalf of the Claimant that section 4(1) of the Limitation of Actions Act was not applicable and that although the Claimant was dismissed in 1997, he was reinstated on 18 November 1999 after an appeal, and that on 6 November 2013, the Respondent

- wrote to the Claimant informing him of his retirement in the public interest and therefore the cause of action accrued on 6 November 2013.
9. On the issue of *res judicata*, the Claimant urged that the suit before the lower Court was not determined on the merits.
 10. It is clear from the documentation on record that the Claimant was dismissed through a letter dated 2 December 1997. It is also apparent from the Respondent's letter dated 13 January 2000 that the Public Service Commission considered an appeal by the Claimant and he was reinstated.
 11. It is also apparent from the letter dated 2 August 2013 by the Principal Secretary, Ministry of Devolution and Planning that a decision was taken to retire the Claimant in the public interest sometime around 18 July 2013.
 12. In paragraph 6 of the Memorandum of Claim, the Claimant pleaded

6) THAT the Claimant was first engaged by the Respondent as a laborer on 27th June 1979 and rose through the ranks as a result of sterling performance up to clerical Officer III, Salary Scale '15', a position he held till termination on 2nd December 1997. (Annexed herewith is a copy of the dismissal letter marked MMG 4.

13. At paragraph 15, it was pleaded that

15. THAT the Claimant was served with a letter dated 6 November, 2013 titled 'RETIREMENT IN THE PUBLIC INTEREST'. He was not given an explanation nor a show cause letter save for the allegations confined in the said letter for early retirement. We wish to state that, the claimant was hounded out of employment unfairly without following the laid down procedure for retirement in accord with justice and equity.

14. From the Memorandum of Claim, the facts constituting the cause of action have been incoherently set out. The pleading is tardy at best. It is not clear whether the Claimant is challenging the dismissal in 1997 or the retirement in the public interest in 2013.
15. The best cause of action in the view of the Court is to direct the Claimant to amend his pleadings to concisely and coherently set out the facts and cause of action he has against the Respondent.
16. The Amended Memorandum of Claim, witness statements and documents to be relied on should be filed and served within 10 days of this ruling failure to which the Memorandum of Claim will stand struck out.
17. The Respondent thereafter shall have 10 days to file and serve an Amended Response, witness statements and documents to be relied upon.
18. The issue of *res judicata* can only be properly determined on the basis of clear and coherent pleadings.
19. The Preliminary Objection was merited considering the state of pleadings but in consideration of the view taken by the Court, the Claimant should pay the Respondent costs of the objection assessed as Kshs 10,000/- within the next 5 days.
20. It is so ordered.

Delivered, dated and signed in Nakuru on this 13th day of November 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Maragia instructed by Maragia Ogaro & Co. Advocates

For Respondent Mr. Maina instructed by Ikua, Mwangi & Co. Advocates

Court Assistant Nixon