



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

APPEAL NUMBER 18 OF 2015

BETWEEN

MOHAMMED OMAR DOYO APPELLANT

VERSUS

KENYA SAFARI LODGES & HOTELS LIMITED.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

[An Appeal from the Ruling of the Learned Resident Magistrate delivered on the 23rd August 2007, in Mombasa Resident Magistrate's Court Civil Suit No. 1290 of 2005].

BETWEEN

MOHAMMED OMAR DOYO PLAINTIFF

VERSUS

KENYA SAFARI LODGES & HOTELS LIMITED.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

Rika J

Court Assistant: Benjamin Kombe

Mohamed Omar Doyo the Appellant in Person

Mr. Nanji instructed by Kishore Nanji & Company Advocates for the 1st Respondent

Attorney General the 2nd Respondent absent

JUDGMENT

1. The Appellant filed an Amended Complaint, before the Resident Magistrate's Court Mombasa, on 18th December 2007.
2. The Claim was against his former Employer, the 1st Respondent herein and the Attorney General, 2nd Respondent herein. The Appellant alleged he was arrested on 27th February 2004 while at work, on the allegations made by the 1st Respondent, that the Appellant had stolen a mobile phone.
3. The arrest led to the Appellant's loss of employment. He claimed the action by the Employer and the Police was wrongful. He asked the Court to order he is paid by the Respondents general damages for wrongful arrest.
4. The Attorney-General raised a point of preliminary objection when the matter came up for hearing. It was argued that the Appellant was arrested on 27th February 2004, released on 2nd March 2004, and filed his Complaint on 20th April 2005.
5. The Respondents argued, and the Learned Magistrate agreed, that under Section 3 of the Public Authorities Limitation Act, Cap 39 of Laws of Kenya, no proceedings founded on tort, shall be brought against the Government after the end of 12 months from the date the cause of action accrued. The Appellant was found to have filed his Claim out of time, and the Claim therefore struck out, leading to the filing of the Appeal.
6. The Appeal was received at the High Court in Mombasa being Civil Appeal No. 199 of 2012. It was transferred by the High Court to the Employment and Labour Relations Court, on 25th June 2015. Parties agreed on 25th September 2015, to have the Appeal considered, and Judgment made on the strength of the Record.
7. The Appellant filed 8 Grounds of Appeal. This was done in Person and the Grounds are therefore, sometimes repetitious, and occasionally ambiguous. Be that as it may, the Appellant states he was denied a fair hearing in the Lower Court, and that failure to file the Claim in time, was caused by his then Advocates.

The Court Finds:-

8. Section 3 of the Public Authorities Limitation Act, Cap 39 the Laws of Kenya applies to the proceedings against the Government and the Local Authorities.
9. Whereas the defence of limitation of time was properly raised and upheld as against the Attorney General, it was improperly extended to protect the 1st Respondent.
10. The 1st Respondent was not shown to be the Government, or a Local Authority. The Pleadings described the 1st Respondent as a Limited Liability Company t/a Mombasa Beach Hotels. There was no linkage with the Government or Local Authority.
11. The preliminary objection was raised by the 2nd Respondent and limited to the Public Authorities Limitation Act.
12. There was no reason given in the Ruling of the Learned Magistrate why the Claim against the 1st Respondent was rejected on account of a statute which is inapplicable to private entities.
13. This supports the Appellant's ground that he was not given a fair hearing. The Appeal therefore succeeds on this ground.

14. The Magistrate's Court however no longer has the jurisdiction to hear and determine employment disputes. The High Court transferred this Appeal upon finding the dispute involved an employment issue.

15. It would therefore not be possible to remit the dispute for retrial before the Magistrate's Court.

IT IS ORDERED:-

- a. *Appeal against the 1st Respondent is allowed.*
- b. *The Ruling of the Magistrate's Court with regard to the Claim against the 2nd Respondent is sustained.*
- c. *The R.M.C.C. No. 1290 of 2005 is transferred to the Employment & Labour Relations Court Mombasa, for trial and determination.*
- d. *Considering the age of the dispute, Parties are encouraged to agree on disposal of the transferred Claim through written submissions.*
- e. *Parties to meet their costs of the Lower Court Suit and the Appeal.*

Dated and delivered at Mombasa this 4th day of December 2015

James Rika

Judge