

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 273 OF 2013

(BEFORE HON. LADY JUSTICE HELLEN WASILWA ON 15.1.2014)

BARRACK MUSUMBA OLUOCH.....CLAIMANT

VERSUS

NYANZA SUGAR AND PRODUCE LTD.....RESPONDENTS

RULING

The respondents herein Nyanza Sugar and Produce Ltd have raised a Preliminary objection seeking dismissal of claimant's claim stating that it is an abuse of the Court process and is statutorily barred. They claim that the claim was filed on 8.11.13 four years after his termination on 31.10.2009. The respondents contention is that under Section 90 of Employment Act, the Industrial Court cannot extend time of this Suit.

The claimants opposed the Preliminary objection and stated that the claim was brought in good faith after leave to file claim out of time was granted on 26.9.13.

I have considered submissions of both Parties, I do find that indeed leave to file this case out of time was sought and granted. This was in consideration of the provision of Section 4 and 28 of Cap 22, Limitation of Actions Act. This Court having granted the orders for extension of time cannot entertain the Preliminary objection on the same issue as this is tantamount to sitting on appeal against its own orders. For that reason alone, I find the Preliminary Objection has no merit and I dismiss it accordingly. The hearing of this case will proceed on merit accordingly.

HELLEN WASILWA

JUDGE

15.1.2014

Appearance

Onyango for respondents

Muasya for applicant

C/c- Wamache