



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 1417 OF 2013

BETWEEN

JAMES NGUGI.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF NAIROBI.....RESPONDENT

RULING

The Claimant in this dispute, was a Plaintiff in the High Court of Kenya at Nairobi, Civil Case No. 1073 of 2005. The Principal Officers, City Council of Nairobi, were Defendants.

The High Court Case was on the summary dismissal of the Claimant which took place in May 2005. The Claimant sought Orders for reinstatement; back salaries; withdrawal of false allegations; and redress for defamation.

The High Court case was fully heard, and Judgment delivered by Hon. Justice Joyce Aluoch on 12th July 2007. The Court declined the prayer for reinstatement and the other prayers, save for the declaration that summary dismissal was wrongful, and payment of half pay due to the Claimant from February 2000 to June 2005.

6 years after this Judgment, the Claimant filed the instant Claim, Cause No. 1417 of 2013 at the Industrial Court. The Claim was filed on 4th September 2013. It is against the County Government of Nairobi, which succeeded the City Council of Nairobi, on the change of the Constitution of Kenya in 2010.

In the fresh proceedings, the Claimant basis his grievance on the same summary dismissal that took place in May 2005.

He seeks 10 prayers, among them a declaration that his contract was unfairly and unlawfully terminated; that his constitutional guarantees of fair labour practices, and fair administrative action have been violated; and that he is paid general damages for unlawful and unfair dismissal, as well as damages for gross violation of his constitutional rights.

The Respondent filed a Notice of Preliminary Objection on 29th November 2013, based on the principle of *res judicata*. This was supplemented by the ground added in the Respondent's Submissions filed on 6th February 2014, that the fresh Claim is time-barred under Section 90 of the Employment Act 2007.

The Advocates agreed to file and exchange written submissions, and authorized the Court to make its determination based on the submissions.

The Court Finds and Orders:-

1. The Claim is both *res judicata* and statutory-barred.
2. The same parties, or their successors, litigated over the same subject matter of the Claimant's summary dismissal, and a final and binding decision was made on 12th July 2007, by a Court of competent jurisdiction.
3. It is not proper for the Claimant to seek to have prayers which were rejected by the High Court, or which he excluded from his Plaint in the High Court. The Law does not contemplate incremental grant of remedies by various judicial platforms, granted to the same party, over the same cause of action, and against the same Defendants/Respondents or their successors.
4. The Respondent cannot have violated the Claimant's constitutional guarantees under Article 41(1) and 47(1) in May 2005. These guarantees would have to be in existence at the time of summary dismissal, for the Respondent or its predecessor, to violate them. The Constitution does not bend backwards to remedy a perceived wrong of a contractual nature.
5. The Law on unfair and unlawful termination applicable to the Claimant's summary dismissal, would have to be the Law as in existence in May 2005. The Claimant cannot therefore rely on the changes made to the Law after May 2005, to exact more money from the Respondent. The Law as is today, requires Employment Claims are filed within 90 days from the date of accrual, or if accruing before the enactment of the Labour Relations Act No. 14 of 2007, to be filed in accordance with the Trade Disputes Act Cap 234. As the Claimant is clear the applicable substantive Law is the repealed Employment Act Cap 226 the Laws of Kenya, he could only pursue damages for wrongful dismissal at the Industrial Court, under the procedural Law prescribed under Section 84 of the Labour Relations Act. This is if it is to be assumed there is a residual Claim for wrongful dismissal. Damages and declarations under the Constitution of Kenya 2010 are not available to the Claimant.
6. As noted elsewhere however, the Claimant opted to file his Claim for wrongful dismissal at the High Court. The High Court exercised its jurisdiction, and applied the jurisprudence of the day, declining most of the prayers sought by the Claimant. He cannot be allowed to vex the Respondent over the same action that was determined by the High Court. It would be wrong if he is allowed to manipulate the Constitution, to circumvent the clear provisions of the Law. ***The Preliminary Objection is upheld. The Claim is hereby dismissed with costs to the Respondent.***

Dated and delivered at Nairobi this 20th day of March 2014

James Rika

Judge