



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO 392 OF 2013

BABERE ISAAC WANTAHE.....CLAIMANT

VS

LAVINGTON SECURITY GUARDS LTD.....RESPONDENT

RULING

1. On 25th March 2013, the Claimant filed a Memorandum of claim seeking payment of terminal dues. In a Statement of Defence filed on 1st July 2013, the Respondent gave notice of a Preliminary Objection on the following grounds:
 - a. That the cause of action which arose in the year 2002 is time barred under the Limitation of Actions Act (Cap 22, Laws of Kenya);
 - b. That the claim based on injuries sustained by the Claimant is *res judicata* and the this Court therefore lacks jurisdiction to determine it;
 - c. That the claim herein does not disclose any prayers and is thus an abuse of the court process;
 - d. That the claim is not supported by a verifying affidavit as required by law.
2. The Preliminary Objection was reiterated in a notice dated 29th October 2013 and filed in Court on even date.
3. The Claimant filed a response to the Respondent's Preliminary Objection on 26th November 2013 in which he stated that his claim was not time barred because the Respondent had, in 2008 acknowledged owing him some dues. Further, the issue determined at the Chief Magistrate's Court at Milimani on 8th June 2007 had to do with compensation under the Workman's Compensation Act and not payment of dues and his claim under the current Cause was not therefore *res judicata*.
4. At the hearing of the Preliminary Objection, Miss Akhaabi for the Respondent rehashed the grounds of objection filed in Court.
5. On his part, the Claimant who appeared in person told the Court that the delay in filing his claim was occasioned by his former Advocate. While acknowledging having received some compensation for the injury he had suffered in the course of his employment, he stated that his current claim was in pursuit of terminal dues.

6. The main ground of the Respondent's Preliminary Objection is that the Claimant's claim is statute barred. Section 4(1) (a) of the Limitation of Actions Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued. While the Act does provide for extension of time especially in cases of disability, a party can only appropriate the benefits of extension of time with leave of the Court.

7. In the case before me it is not in contest that the Claimant's employment was terminated in August 2002. It follows therefore that his claim which was filed on 25th March 2013, well beyond the 6 years limitation period provided under Section 4(1)(a) of the Limitation of Actions Act, was brought out of time and without leave of the Court.

8. In the case of *Divecon Vs Simani [1958-1998] EA 48* the Court of Appeal held that courts have no jurisdiction to entertain claims brought in contract after 6 years following accrual of the cause of action. The Claimant brought his claim well after the six year statutory period set in Section 4(1)(a) of the Limitation of Actions Act and the Court therefore lacks jurisdiction to entertain it. In view of this finding, I find no need to address the other grounds of objection. The result is that the Claimant's claim is struck out with no order for costs.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF MARCH 2014

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*