



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 163/2013

(Before Hon. Justice Hellen Wasilwa on 30th April, 2014)

GLADYS AMUKOYA WERECLAIMANT/ APPLICANT

VERSUS

MUMIAS SUGAR COMPANY.....RESPONDENT

RULING

On 6th November, 2013, this court dismissed the Claimant's claim dated 24.10.2012 for unfair termination, which sought for reinstatement to work. The claimant's suit was dismissed because it was statute barred under section 90 of the Employment Act 2007, having been brought after the lapse of the 3 years which is the mandatory statutory period of instituting an industrial claim.

A brief history of the Applicant's dispute is that she had being dismissed from her employment on the 8.6.2009. The Applicant was subsequently charged in a criminal case, allegedly for the offence of theft of a banker's cheque, which matter was finally concluded and dismissed on the 26.11.2010. She later instituted an employment dispute before this court on 24.10.2012 seeking to be reinstated to her previous job.

Upon this court's findings on 6th November, 2013, the Claimant /Applicant, aggrieved by this court's decision to dismiss her claim, filed an application for review of the court's findings under certificate of urgency. The application sought the following orders:

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- a. **THAT** there is and was an error apparent of the face of the record of court as to the computation of the statutory period.
- b. **THAT** in view of the above, the court do find that the filing of this suit was within the statutory period and that the judgment pronounced on the 6th day of November, 2013 be varied.
- c. **THAT** upon granting of such orders, the court do find in favour of the Claimant/ Applicant and judgment be entered against the Respondents in terms of the claim herein.
- d. **THAT** the Claimant/Applicant stands to suffer great prejudice in view of the fact that she may be deprived off her rightful lifetime earnings.
- e. **THAT** it is only fair and just that the orders sought be granted.
- f. **THAT** this application has been made without inordinate delay.”

The application was based on grounds stated in the body thereof as well as the Applicant's affidavit

sworn on the 2nd day of December, 2013. In the Applicant's affidavit in support of the application, the Applicant stated that she was aggrieved by this court's computation of the limitation of time provided for under section 90 of the Employment Act 2007, which resulted into the dismissal of her claim.

She was aggrieved that the court computed the statutory period provided under section 90 of the employment Act of 2007 beginning from the 26.11.2010, contending that the time should have lapsed on the 8th day of June 2013, inclusive of the **"12th Month net after cessation thereof"** provision clause stipulated under section 90 of the Employment Act, 2007.

Having carefully considered the Claimant/Applicants application, I am of the view that the issue that fall for determination are the following:-

What is the scope of section 90 of the Employment Act 2007 provisions concerning the cessation of a continuing injury or damage, with regard to the Claimant's application?

On this issue, I will start by making reference to section 90 of the Employment Act which stipulates that:

"notwithstanding the provisions of section 4(1) of the Limitation of Statutes Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years net after the act, neglect or default complained or in case of continuing injury or damage, within twelve months net after the cessation thereof." (*Emphasis mine*)

The Employment Act provides for a mandatory duration of three years to institute an employment dispute. The Applicant was dismissed from her employment on the 8.6.2009, she was subsequently charged in a criminal case, allegedly for the offence of theft of a banker's cheque, which matter was finally concluded and dismissed on the 26.11.2010. Her employment claim before this court was brought on 24.10.2012. Computing from 8.6.2009 to 24.10.2012, this was long past the three (3) year mandatory timelines set by the Employment Act, which are neither negotiable nor can they be extended by any court for whatever reason.

In my judgment dated 6. 11. 2013, at page 9, I stated, which that the proper time for the Applicant to have filed her suit was by 7.6.2012, counting from 8.6.2009 when she was dismissed. However, under the limb of section 90 of the Employment Act that provides that:-

"...or in case of continuing injury or damage, within twelve months net after the cessation thereof." The continuing injury or damage was in motion during the pendency of the criminal case.

To my mind therefore the claimant should have filed her claim within 12 months after the dismissal of the criminal case against her, which was made on the 26.11.2010. The Applicant's claim was filed on 24.10.2014 way past the mandatory 12 months stipulation under the Employment Act. Accordingly, I see no apparent error or mis-computation to the statutory period in the Applicant's claim.

In view of the foregoing, the entire motion is dismissed; the applicant shall bear the costs of this application.

Dated and delivered at Kisumu this 30th Day of April 2014.

HELLEN WASILWA

JUDGE

Appearances:

Ashioya for claimant present

Mwaura for respondents present

CC. Wamache