



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1969 OF 2012

SAMUEL OCHIENG SAGATI CLAIMANT

VERSUS

CHINA JIANGSU INTERNATIONAL LIMITED 1ST RESPONDENT

YIANG GUO (DIRECTOR) 2ND RESPONDENT

WANG BIAO (DIRECTOR) 3RD RESPONDENT

LABOUR COMMISSIONER 4TH RESPONDENT

Mr. Juma for the Claimant

Mr. Karuga for the Respondents

RULING

1. This suit was filed via a memorandum of claim dated 2nd October, 2012 on the same date.
2. The cause of action from the said memorandum of claim arose on 7th January 1996, when the Claimant stopped working at a building site of the Respondent and purports to have reported the dispute to the Ministry of Labour and Human Resource Development although no documentation evidence alleged report.
3. The Claim was brought more than sixteen (16) years from the date the cause of action arose.
4. The Claim was lodged without an application to the Court for enlargement of time.
5. A notice of preliminary objection was filed by the Respondents on 18th September, 2013.
6. It is now trite that a claim based on contract, including a labour matter may not be filed upon expiry of six (6) years if the cause of action arose before 2007, in terms of the repealed *Trade dispute Act Cap 234* of the Laws of Kenya.
7. Further, if the cause of action arose after the *Employment Act, 2007* came into operation in the year 2008, it may only be filed within 3 years in terms of *Section 90* of the said Act.

8. There having been no application for enlargement of time, which in any event is not permissible in terms of both the *limitation of Actions Act Cap 22* of the Laws of Kenya and the *Employment Act of 2007*, unless the injury is a continuing one in which event time stops to run, one year after the cessation of the continued injury or damage, the claim was filed out of time.

Accordingly the preliminary objection is upheld with the result that the suit is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 4th day of April, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE