



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1154 OF 2011

ZACHARIAH KERAUNI MAOSA.....CLAIMANT

VS

BRITISH AMERICAN INSURANCE CO (K) LTD.....RESPONDENT

RULING

1. On 14th July 2011, the Claimant brought a claim against the Respondent seeking payment of pension, bonds, commissions and other dues. The Respondent filed a Memorandum of Response on 4th August 2011 in which a preliminary objection was raised. The Respondent then filed Notices of Preliminary Objection on 29th July 2011 and 17th September 2013. The gist of the objection taken by the Respondent is that the Claimant's claim is statute barred.
2. The Respondent filed Grounds of Opposition on 25th September, 2013 stating the following:
 - a. That the Claimant's claim was well within time since the Respondent's policy document provides for retirement at 60 years which the Claimant attained in 2010;
 - b. That the cause of action herein therefore accrued upon the Claimant attaining the age of 60 in 2010 ;
 - c. That the Respondent is estopped by its own policy from pleading limitation of time on the Claimant's claim;
 - d. That there is no provision in the Employment Act, the Limitation of Actions Act or the Pensions Act stopping the Claimant from claiming his pension, bonds or commissions;
 - e. That the Claimant has been pursuing his claim but the Respondent has not taken any steps towards settling the Claimant's claim;
 - f. That the Respondent therefore remains indebted to the Claimant;
 - g. That the Employment Act, 2007 does not apply to the Claimant's case.
3. The single issue for determination in this application is whether the Claimant's claim is statute barred. The Respondent submits that since the Claimant's employment with the Respondent terminated in 1997, his claim which was filed on 14th July 2011 is outside the limitation period under the Limitation of Actions Act.

4. In response, the Claimant submits that his claim which comprises of unpaid pension, bonds, commissions and other dues is not subject to limitation. With specific reference to the claim for unpaid pension, it was submitted on behalf of the Claimant that the Respondent's pension scheme rules do not permit payment of pension before attainment of the normal retirement age of 60 years.

5. Section 4 (1) (a) of the Limitation of Actions Act provides that actions arising from contract may not be brought after six years from the date on which the cause of action accrues.

6. In the case before me, it is not in dispute that the Claimant was employed by the Respondent between 1976 and 1997. On the fact of it, the Claimant's claim filed on 14th July 2011, would therefore be beyond the six years limitation period set under Section 4 (1) (a) of the Limitation of Actions Act. It is however the Claimant's case that part of his claim, being outstanding pension is governed by internal rules that prevented him from accessing his pension before attainment of the normal retirement age of 60 years. In my view, these are matters of fact that cannot be determined *in limine*.

7. I therefore find that the Preliminary Objection taken by the Respondent does not fit within the definition set out in the well known case of ***Mukisa Biscuits Vs West End Distributors Limited [1969] EA***. The objection is therefore overruled with no order for costs.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 7TH DAY OF APRIL 2014

LINNET NDOLO

JUDGE

In the Presence of:

.....***Claimant***

.....***Respondent***