



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 266 OF 2013

(Formerly Cause No. 2462 of 2012 at Nairobi)

JAMES K. NYARIBO.....CLAIMANT

- VERSUS -

PERMANENT SECRETARY MINISTRY OF

PUBLIC WORKS.....1ST RESPONDENT

HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 9th May, 2014)

RULING

The respondents filed a notice of preliminary objection on 15.03.2013 against the claimant's suit on the grounds:

- a. **That the suit offends the provisions of section 90 of the Employment Act and ought to be dismissed with costs.**
- b. **That the suit is clearly time-barred and an abuse of the court process and ought to be dismissed.**

By consent of the parties, the case was fixed for hearing on 5.5.2014. The claimant and the claimant's counsel did not attend court. The respondents' counsel was present and the court directed that the preliminary objection be urged.

It was submitted for the respondents that the claimant's statement of claim was filed on 7.12.2012 whereas the cause of action accrued on 23.06.2007. The suit was therefore time-barred under **section 90 of the Employment Act, 2007**. The section provides as follows:

“90. Notwithstanding the provisions of section 4 (1) of the Limitation of Actions 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 next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

Paragraph 4 of the statement of claim is clear that the claimant alleges that he was unfairly dismissed on

23.06.2007. The statement of claim was filed on 07.12.2012 obviously long after the lapsing of 3 years on or about 23.06.2010.

In **Nicodemus Marani-Versus- Timsales Limited [2014] eKLR**, this court held that the court is not vested with statutory power to extend the 3 years prescribed in section 90 of the Employment Act, 2007. The court further stated, “**...Thus, the court holds that section 90 of the Employment Act provides a time of limitation of 3 years and in an appropriate case, exceptions may exist like is envisaged in section 39 of the Limitation of Actions Act.**”

The court finds that in this case the exceptions in **section 39 of the Limitation of Actions Act** have not been established.

In conclusion, the preliminary objection is upheld and the statement of claim is dismissed with costs.

Signed, dated and delivered in court at **Nakuru** this **Friday 9th May, 2014.**

BYRAM ONGAYA

JUDGE