

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 418 OF 2013

MOSES HINZANOCLAIMANT

VERSUS

MOMBASA SLAUGHTER HOUSERESPONDENT

R U L I N G

This is a Preliminary Objection (P.O.) filed by the respondent by which she prays for the suit herein to be struck out for being brought out of time. According to the respondent, Section 90 of the employment Act limits the time within which to bring a suit based on Employment to only 3 years. Consequently, according to her, because the cause of action arose on 5/2/2008, when the claimant services were terminated by the respondent, the same had become time barred by the time this suit was filed on 29/11/2013.

The claimant has opposed the P.O. on two grounds. Firstly, the claimant contends that the suit had initially been referred for conciliation by the Minister for Labour. Consequently, the statutory period stopped running from the time the suit was referred to the minister for conciliation. Secondly, the claimant has contended that Section 90 of the Employment Act 2007 cited by the respondent does not apply to this suit because the cause of action arose before the said Act became operational on 2/6/2008. consequently the law applicable according to the claimant is Section 4 of the Limitation of Actions Act which provided for limitation period of 6 years for employment contracts disputes.

The P.O. was disposed by written submissions which the court has carefully considered together with the law and the judicial precedents cited. This court is without any doubt that there is much jurisprudence developed by this court to the effect that Section 90 of the employment Act did not operate retrospectively to causes of action which arose before 2/6/2008 when the 2007 Act became operational. This does not therefore see why it should make any different decision on the matter. The reason for the foregoing is that law does not operate retrospectively. Consequently the P.O. must fail.

On whether referral of a dispute to conciliation by the minister under the Labour Relations Act suspends the limitation period from running, the court observes that there is no express provision to that effect. If that was the intention of the legislature, nothing would have been easier than to state so expressly as it was provided for under the Trade Disputes Act which was repealed by the LRA 2007.

In conclusion and in view of the finding above that Section 90 of the Employment Act is in-applicable to the cause of action herein, the P.O. is dismissed with costs.

Dated, Signed and delivered this 25th July 2014.

O. N. Makau

Judge