



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 691 OF 2013

HESBONE GAVUNJI MAFUNYA CLAIMANT

VERSUS

KENYA COMMERCIAL BANK LTD. RESPONDENT

Mr. Kimani Njoroge for Respondent / Applicant

Mr. Ochalo for Claimant

RULING

1. The Memorandum of claim was filed on 15th May 2013.
2. The cause of action arose on 3rd June 2009 when the termination of employment of the Claimant took place. The claim was therefore filed 3 years and 11 months after the date the cause of action arose.
3. No application for extension of time was made prior to the filing of the suit or after.
4. **Section 90** of the **Employment Act, No. 11 of 2007** governs, limitation of actions for suits based on employment contracts.

The Section reads as follows:

“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.”

5. The Claimant was charged in criminal case number 307 of 2009 before the Chief Magistrate Court and was acquitted on 3rd November 2011. The Criminal case was at the behest of the Respondent. The Respondent had also frozen the Claimant’s bank account No. **[Particulars withheld]** Kenya Commercial Bank Moi Avenue holding Kshs.1,733,000/= which the Respondent has failed to release inspite of demands by the Claimant.

This amount was withheld by the Respondent up until the time of filing the suit.

6. It is clear from the pleadings of the Claimant that the injury complained of by the Claimant was 'continuing injury or damage' within the meaning of **Section 90** of the **Employment Act**.

This matter is therefore not caught by the doctrine of laches and was filed within time.

The suit will take its normal course.

Dated and Delivered at Nairobi this 11th day of July, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE