



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1419 OF 2013

TOM MBOYA ANALO.....CLAIMANT

VS

THE COUNTY GOVERNMENT OF NAIROBI.....RESPONDENT

RULING

1. This ruling flows from a preliminary objection taken by the Respondent by notice dated 28th November 2013. The objection is based on the ground that since the cause of action herein arose on 4th July 2000, the Claimant's claim which was filed on 4th September 2013 is statute barred by dint of Section 90 of the Employment Act, 2007.
2. The Claimant filed grounds of opposition on 4th February 2014 stating that:
 - a. Article 159 (2) (d) of the Constitution of Kenya, 2010 requires that justice be administered without undue regard to procedural technicalities;
 - b. Since the Claimant's employment was terminated on 8th June 2005, Section 90 of the Employment Act, 2007 does not apply in his case. Rather, the applicable limitation law is Section 4(1) of the Limitation of Actions Act;
 - c. Time did not begin to run against the Claimant until 31st October 2011 for the following reasons:
 - i) The Finance Committee of the County Council of Nairobi, in its meeting held on 3rd March 2005 resolved to dismiss the Claimant on account of gross misconduct despite the Claimant having been exonerated from blame;
 - ii) The Finance Committee thereafter reviewed its decision in a meeting held on 15th March 2007 and resolved to reinstate the Claimant;
 - iii) The Claimant subsequently through the Commission on Administrative Justice followed up on his reinstatement whereupon the Nairobi City Council responded by letter dated 8th August 2011 stating that a meeting of the Finance Committee held on 10th March 2010 had re-affirmed the decision of the Public Service Commission to dismiss the

Claimant. The Claimant only came to learn of this decision when the Public Service Commission wrote to him on 31st October 2011;

iv) After the resolution to reinstate him was made by the Finance Committee of the City Council, the Claimant waited patiently and was hopeful that the Council would implement its own decision;

v) Under the Public Commission (Local Authorities Officers) Regulations, 1984 the Council had delegated powers to conclusively deal with the Claimant's case.

Determination

3. The single issue for determination in this ruling is whether the Claimant's claim is statute barred. The Claimant was summarily dismissed by letter dated 8th June 2005 which sought to backdate the dismissal to 4th July 2000 when the Claimant was interdicted.

4. Even assuming that the City Council of Nairobi could not lawfully backdate the effective date of the summary dismissal, the cause of action in this case clearly occurred well before enactment of the Employment Act, 2007. I therefore agree with Counsel for the Claimant that the limitation period in Section 90 of that Act does not apply to the Claimant's claim.

5. That said, the applicable limitation law is found in Section 4(1) of the Limitation of Actions Act which provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued. This position was confirmed in ***Divecon Vs Simani [1958-1998] EA 48*** where the Court of Appeal held that courts have no jurisdiction to entertain claims brought in contract after six years following accrual of the cause of action.

6. In the case of ***Hilarion Mwabolo Vs Kenya Commercial Bank [2013] eKLR*** this Court held that accrual of the cause of action in a claim emanating from termination of employment takes effect from the date of termination as stated in the letter of termination.

7. In the instant case, the Nairobi City Council sought to backdate the Claimant's termination date to 4th July 2000 being the date of his interdiction. I do not think the City Council was right to do so and it is my view therefore that the effective date of the Claimant's termination could not have been before 5th April 2005 when the decision to dismiss him was taken.

8. Counsel for the Claimant sought to extend the date from which time began to run against the Claimant to 31st October 2011 citing internal dispute resolution processes that had been undertaken prior to that date. Reference was made to decisions of this Court where Judges have held that once labour disputes are referred to conciliation, time stops to run until the conciliation process is brought to closure (see ***Kenya Scientific Research International Technical and Allied Workers Union Vs Rainald Schumera [2012] EKL***- Wasilwa J and ***Kenya Plantation and Agricultural Workers Union Vs Mununga Leaf Base [2013] EKL***- Abuodha J and ***Kenya Local Government***).

9. While I fully agree with the rendering of my learned colleagues in these cases, I hold the view that they are distinguishable from the case before me. The conciliation process discussed in these decisions is well set out in the Labour Relations Act as a legitimate step in the resolution of labour disputes. I do not however think that the high status given to the conciliation process provided for in the Act, can be assigned to any other internal process undertaken between an employer and an employee without intervention of the Ministry of Labour.

10. For this reason, I find that the discussions held and interventions made with regard to the Claimant's case could not halt the running of time for purposes of limitation under Section 4(1) of the Limitation of Actions Act. I consequently find that the Claimant's claim is indeed statute

barred and hereby strike it out with no order for costs.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF
JULY 2014**

LINNET NDOLO

JUDGE

Appearance:

Ms. Kayukira for the Claimant

Mr. Ongicho for the Respondent