



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1806 OF 2013

JACINTA WANGARI NJOROGE

DICKSON KIATU MUSYIMI

SAMSON MUTUNGA MUTUA

STEPHEN WAWERU GACHANGO

JAMES OBURU.....CLAIMANTS

VERSUS

SAROVA HOTELS LTD wrongly sued as

THE SAROVA STANLEYRESPONDENT

RULING

The Claim herein was commenced by a statement of claim filed by the five Claimants on 11th November 2013. They allege unfair dismissal by the Respondent on 3rd August 2007.

The Respondent filed its response to the Claim where it avers the summary dismissal of the Claimants was regular and in accordance with the law. The Respondent further avers that the claim is statutory barred under Section 4 of the Limitation of Actions Act, that the court therefore has no jurisdiction to hear and determine the claim and further that the claim is incompetent.

On 5th March 2014 the Respondent filed a Notice of Motion seeking the following orders: -

1. That the Claimant's claim herein be dismissed the same being statute-barred with costs;
2. That cost be provided for;

The application is supported by the following grounds:-

- i. The Claimants have admitted in paragraph 6 of the claim that the Respondent/Applicant dismissed them unlawfully from employment on 3/8/2007.
- ii. The cause of action in this matter therefore arose on the 3.8.2007 and was extinguished 6 years later on 4.8.2013 by virtue of Section 4, Limitation of Actions Act;
- iii. The Claimants herein filed the claim on 11.11.13 long after the right to claim had become extinct and the cause of action extinguished;
- iv. There is no valid claim that can confer jurisdiction upon the court to hear and determine the

Claimants suit;

The Claimants did not file any reply to the Notice of Motion.

When the application came up for hearing on 17th March 2014 the parties agreed to proceed by way of written submissions.

The respondent/Applicant filed the written submissions on 1st April 2014 while the Claimants submissions were filed on 5th May 2014.

The Respondent submitted that the course of action arose on 3rd August 2007 and was therefore extinguished on 4th August 2007 upon expiry of the limitation period of 6 years. That Section 4 of the Limitation of Actions Act bars claims of this nature, that the court therefore has no jurisdiction to hear the claim and it ought to be dismissed with costs.

The Respondent further submitted that the notice of motion as filed complies with the Civil Procedure Rules 2010, Order 51 Rule 4. That the fact that it is not supported by affidavit does not make it irregular.

The Respondent/Applicant relied on the case of **Vincent Abwao V Aimsoft Ltd: Cause 40 of 2011** where the court dismissed the Claimant's case under Section 4 of the Limitation of Actions Act for having been filed out of time.

In their written submissions the Claimants argue that the Notice of Motion is defective as it is not supported by an affidavit.

On the issue of limitation the Claimants submit that the limitation period for claims based on contracts and non- statutory claims to the Industrial Court is not 6 years but is actually 3 years under Section 90 of the Employment Act. That the claims of the Claimants are based on continuing injury and has not ceased. That statutory payments do not lapse until the employer makes payment and further that it would make complete nonsense of the law if an employer who fails to obey the law by paying statutory payments can escape liability on grounds of statutory limitation.

I have considered the application and the submissions by the parties. I have also considered the law and the authorities cited by the parties.

The claim herein arose in 2007 before the Employment Act 2007 came into force. The Act came into operation on 2nd June 2008.

Under the repealed Employment Act, claims were governed by Section 4 of the Limitation of Actions Act which provides that contractual claims lapse after 6 years.

The claim herein was filed in court on 11th November 2013 yet the cause of action lapsed on 3rd August 2013. No mention is made about the limitation period in the statement of claim. The statement of claim is therefore on the face of it, time barred.

The Claimants have argued that statutory claims do not lapse for as long as they have not been paid. I do not agree. In the first place the claims against the Respondent are not statutory but contractual. Secondly even if they were statutory the claimants have not referred this court to any law that provides that such claims are not subject to the law of limitation. The statement of claim should have pleaded the legal provisions under which the claim is exempted from the provisions of the Limitation of Actions Act, which has not been done.

On the validity of the Notice of Motion, the Claimants have not referred the court to any law or authority that provides for a notice of motion to be supported by affidavit failing which it would be defective.

Affidavit evidence is just one of the grounds that support the prayers in a notice of motion and is not mandatory. In any event such would be a technicality that would be cured by the filing of the affidavit, if it were the case I find no merit in the argument.

This case having been filed out of time and there having been no extension of time, it is statute barred and this court has no jurisdiction to hear and determine the same.

I therefore strike out the suit. Each party shall bear its costs.

Orders accordingly.

Dated and delivered at Nairobi this 4th day of July 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

No appearance for Claimant/Applicant

No appearance for Respondents