



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 790 OF 2013

BETWEEN

CHARLES BOB ODHIAMBO OWUONDA..... CLAIMANT

VERSUS

KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

The Claimant was employed by the Respondent Insurance Company as an Administrative Assistant on 2nd June 2001.

He was charged in the Magistrates' Court with stealing Kshs.534,088 from his Employer on 12th May 2009.

The Respondent summarily dismissed the Claimant from employment on 14th May 2009.

He states that the Respondent failed to adduce evidence in the criminal case, culminating in the Claimant's acquittal.

He gave the Attorney-General Notice of Intention to file a Claim for Malicious Prosecution on 25th May 2012. He applied for certified copies of the proceedings in the criminal case, and it was only after he obtained these, that he was able to institute the present Claim.

He filed this Claim on 10th January 2014. He challenges the validity of the reason and fairness of procedure in his summary dismissal. He claims compensation for unfair termination and terminal benefits, relying on the Employment Act 2007.

The Respondent filed a Notice of Preliminary Objection on 26th February 2014, stating that this cause of action accrued on 14th May 2009, and the Claim is therefore time-barred under Section 90 of the Employment Act 2007.

The point was argued on 27th March 2014, by the Learned Counsel for the respective Parties.

The Claimant explained delay in filing of the Claim on the ground that he moved to his rural home after losing his job, and had no money to file the claim. It was only after he obtained some money that he was

able to file Claim. He also explained that he could only file the claim after he obtained certified copies of the proceedings from the Criminal Trial.

The Court Finds and Orders:-

1. A catena of judicial precedents of the Industrial Court, have determined that Section 90 of the Employment Act 2007, places an invariable 3 year limit, on the filing of Claims based on/arising out of the Act, or contracts of service in general.
2. The Claimant invokes the Employment Act 2007 in pursuit of his remedies. He cannot evade Section 90, while invoking other sections of the same Law in pursuit of his remedies.
3. The termination decision of 14th May 2009 did not depend on the outcome of the criminal trial. The criminal trial did not in any way, inhibit the Claimant in filing his Claim in compliance with the time limits imposed by the Law.
4. The Court upholds the submission of the Respondent that money cannot similarly, be an inhibiting factor, in filing of the Claim within time. The Industrial Court exacts very minimal fees on lodging of Claims.
5. The hands of this Court are tied. It has no jurisdiction to hear and determine a Claim lodged out of time. Section 90 of the employment At 2007 is not only mandatory, but is also jurisdictional Law. It is to be enforced without resort to equitable exceptions. This Court lacks *jurisdiction racione temporis*. For these reasons, the Preliminary Objection is sustained, *the Claim is dismissed, with no orders on the costs*.

Dated and delivered at Nairobi this 8th day of July 2014

James Rika

Judge