



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT AT NAIROBI**

**CAUSE NO. 1000 OF 2013**

**RULING**

**PAUL MZUNGU SUMBA**

**VERSUS**

**HOUSING FINANCE COMPANY OF KENYA**

**DELIVERED BY**

**HON. LADY JUSTICE MAUREEN ONYANGO**

**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1000 OF 2013**

PAUL MZUNGU SUMBA..... CLAIMANT

VERSUS

HOUSING FINANCE COMPANY OF KENYA .....RESPONDENT

**RULING**

The claim herein was filed by the Claimant against the Respondent on 2<sup>nd</sup> July, 2013. The Claimant alleges that he was forced to resign by the Respondent's Director of Human Resources on 11<sup>th</sup> March, 2008. He alleges he had a flawless record and the compulsion to resign was not warranted. He seeks payment of 30 days salary for each of the 8 years he worked for the Respondent and 12 months salary as compensation for unfair termination.

The respondent filed a reply to the memorandum of claim on 23<sup>rd</sup> May 2014 after obtaining leave to file the same out of time. In the reply to the claim the Respondent denies the allegations in the claim by the Claimant and avers that the Claimant resigned voluntarily. The Respondent further denies owing any monies to the claimant and prays that the claim be dismissed with costs.

On 23<sup>rd</sup> May, 2014, that is the same day the Respondent filed its reply to the statement of claim, the Respondent also filed a Notice of Preliminary objection to the effect that the claim is time barred by virtue of section 90 of the employment Act.

The case came up for hearing of the Preliminary Objection on 11<sup>th</sup> June 2014 when the parties agreed to proceed by way of written submissions.

I have considered the written submissions and the authorities cited by parties.

The gist of the Respondent's Preliminary Objection is that the cause of action arose on 11<sup>th</sup> March 2008 but the claim was filed on 2<sup>nd</sup> July 2013, thus offending Section 90 of the Employment Act which requires that claims be filed within 3 years. That having filed the claim 5 years and 5 months after the cause of action arose, the claim is statute barred. The Respondent prays that the claim be dismissed. The Respondent relied on the following cases:

1. James K. Nyaribo Vs. Permanent Secretary Ministry of Public Works & Another (2014) eKLR.
2. Laban Chema Libabu Vs. Bata Shoe Company (K) Limited Cause No. 46 of 2013,
3. Josephat Ndirangu V.s Henkel Chemicals (E.A) Limited (2013) eKLR;
4. Fred Mudave Gogo Vs. G4S Security Services (K) Limited (2014) eKLR.

The Claimant submitted that the claim had not lapsed when he filed his claim as the limitation period for contracts is 6 years. He further submitted that he was not able to file his claim in good time because he was destabilized by the abrupt termination of his employment and had to relocate his family upcountry. He submitted further that he was unable to file his claim until he secured another job.

The Claimant relied on the case of Esther Kahai Kihima Vs. Trident Insurance Company Limited (2013) eKLR.

I have considered the written submissions by both parties and the cases cited.

The Employment Act 2007 came into operation on 2<sup>nd</sup> June 2008. This means that on 11<sup>th</sup> March 2008 when the Claimant's employment was terminated the applicable law was the Employment Act Cap 226 (now repealed). The limitation period under the repealed Act was 6 years. Section 90 of the Employment Act 2007 on which the Respondent's Preliminary Objection is grounded is not applicable to this case. The cases cited by the Respondent do not support its Preliminary Objection with the exception of the case of James S. Nyaribo – vs- Permanent Secretary, Ministry of Public works & another (2014) eKLR which in my opinion was made in error. I am in any event not bound by the said decision.

I however agree with the case cited by the Claimant, that is Esther Kahai Kihima –vs- Trident Insurance company Limited (2013) eKLR whose facts were similar to the present case.

For the foregoing reasons, I find no merit in the Respondents Preliminary objection and dismiss the same with costs.

Orders accordingly.

Dated in open court this 24<sup>th</sup> day of September, 2014.

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

**In the presence of:**

Wanyanga holding brief for Onduso for Claimant

Kanyuko holding brief for Mr. Kioko for Respondent