



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA

(BIMA TOWERS)

CAUSE NO. 4 OF 2014

JOSEPH TINGA JANGA.....CLAIMANT

v

KENYA MARINE & FISHERIES RESEARCH INSTITUTE.....RESPONDENT

RULING

1. Joseph Tinga Janga (Claimant) was employed by Kenya Marine & Fisheries Research Institute (Respondent) on an undisclosed date and position.
2. Through a letter dated 13 January 2000, the Respondent suspended the Claimant because of criminal charges which had been preferred against him in Mombasa Chief Magistrate's Court Criminal Case No. 135 of 2000. Judgment in the criminal case was delivered on 23 August 2012.
3. The letter of suspension advised the Claimant that the suspension would be reviewed after the outcome of the criminal trial.
4. On 8 June 2001, the Respondent wrote to the Claimant informing him that the Respondent's Board of Management had decided to terminate his services as a Principal Research Officer with effect from 13 January 2000 on the ground of gross misconduct.
5. On 3 July 2001 the Claimant appealed against the termination and sought reconsideration, and on 24 September 2012, the Claimant sought reinstatement on the ground that he had been acquitted in the criminal case. The Respondent rejected the request.
6. On 16 January 2014 the Claimant lodged a Memorandum of Claim against the Respondent in Court and he stated the issue in dispute as *wrongful/unlawful/unfair termination of the Claimant*.
7. The gravamen of the Claimant's case as pleaded is that he was prematurely dismissed through a letter dated 30 May 2001 without following the right procedure on unfounded and untrue allegations.
8. The Respondent was served and on 13 March 2014 it filed a Defence. On 19 May 2014, the Respondent filed an Amended Statement of Defence and what it called *Amended Preliminary Objection* dated 16 May 2014.
9. On 12 June 2014 when the Cause came up for mention, the Respondent informed the Court it had filed a Preliminary Objection. The Court directed that the Preliminary Objection be argued on 7 July 2014.

10. Although the Court record does not have a copy of the initial Preliminary Objection, it will proceed on the basis of the *Amended Preliminary Objection*. The Claimant did not raise any challenge to the same.

11. Before going into the objection, the Court wishes to note that the Amended Statement of Defence was sneaked into the record without leave of Court and the same would be amenable to bring struck out at the instant of the Court *suo moto*.

Respondent's objection

12. The Respondent's objection is that the Court has no jurisdiction over the claim because the claim is statute barred pursuant to the provisions of the Limitation of Actions Act and the Employment Act and therefore incurably defective.

13. Mr. Otieno for the Respondent submitted that the cause of action accrued on 30 May 2001 and that pursuant to section 4(1) of the Limitation of Actions Act, the Court has no jurisdiction to entertain it. He also submitted that no leave was sought or granted before instituting the claim on 27 January 2014.

14. Mr. Otieno cited the authorities of *Livingstone Mutsune & Ar. v African Tours & Hotels Ltd (in receivership)*, Cause No. 55(N) of 2010, *Michael Maina Nderitu v Kenya Power & Lighting Co. Ltd & Ar*, Nairobi Cause No. 34 of 2010. The third authority in the List of Authorities was not produced in Court.

Claimant's response

15. The Claimant's case was urged by Ms. Tsuma. According to Ms. Tsuma the cause of action arose on 8 June 2001 when the Claimant was terminated and that the suit was properly before the Court and should be heard on merit.

16. Ms. Tsuma further submitted that the Respondent gave a promissory estoppel in the letter of suspension that the case would be reviewed after the outcome of the criminal case and therefore section 39 of the Limitation of Actions Act should be invoked. The criminal case was determined in August 2012 and the Claimant acquitted.

17. Ms. Tsuma cited *Daniel Sila v Property Development Management Ltd*, Cause No. 374 of 2011 and *Leonida Makhoha & 3 Ors v Munene Estate Ltd*, Cause No. 1024 of 2010.

Evaluation

18. The Claimant was terminated through a letter dated 8 June 2001. Pursuant to section 4(1) of the Limitation of Actions Act which was the applicable statute for limitation, he ought to have instituted legal action on or before 7 June 2007. He did not. In terms of the arithmetic, he was clearly out of time when he filed the instant Cause on 18 January 2014.

19. When challenged, the Claimant took umbrage in the suspension letter dated 13 January 2000 whose last paragraph stated

Your case will be reviewed after and decided by the outcome of the said charges.

20. The Claimant submits that the Respondent in terms of the above cited text had given him a promise not to take any action pending conclusion of the criminal case. And the Claimant seeks further shelter under section 39 (1) of the Limitation of Actions Act which provide

(1) A period of limitation does not run if –

(a) there is a contract not to plead limitation; or

(b) that the person attempting to plead limitation is stopped from doing so.

(2) For the purposes of subsection (1), “estopped” includes stopped by equitable or promissory estoppels.

21. The doctrine of Promissory estoppel is ably restated in Halsbury’s Laws of England 3rd Ed. Vol. 15 as follows:

When one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced.

22. The above statement of legal principle found acceptance in the Court of Appeal in *Doge v Kenya Cannery Ltd* [1988] KLR when the Court held that It is a principle of justice and equity that when a man by his words or conduct has led another to believe that he may safely act on the faith of them and the other does not act on them, he will not be allowed to go back on what he has said or done when it would be unjust or inequitable for him to do so.

23. The question arising is whether the Respondent is estopped either by equity or promise from pleading limitation on the basis of the suspension letter dated 13 January 2000.

24. To answer the question it is necessary to establish whether the parties contemplated that any legal proceedings would result from any decision taken by the Respondent against the Claimant as a result of the allegations which led to the criminal charges.

25. Ordinarily, in employment law disciplinary action against an employee and criminal charges against employees have different purposes and objectives and are governed by different legal regimes, not dependent on each other.

26. The letter of 13 January 2000 made a promise to the Claimant that the Respondent would only decide on his employment fate after the conclusion of the criminal trial. The Respondent was expressly deferring disciplinary action against the Claimant and opting not to take action until the criminal process was concluded. The Respondent gave an undertaking. The undertaking was clear and unambiguous and it created an expectation which the Claimant was entitled to rely upon. The Respondent went back on its promise to the Claimant to the substantial detriment of the Claimant.

27. In my view, it was reasonably foreseeable to the parties that it would be open to the Claimant to challenge any disciplinary action taken against him at the conclusion of the criminal trial if he was not satisfied. It was not just a remote possibility.

28. The Respondent breached the undertaking in 2001. The Claimant opted to wait till conclusion of the criminal trial before coming to Court. The Respondent had made a promise to the Claimant and it was inequitable for it to turn round and purport to take disciplinary action against the Claimant before conclusion of the criminal trial.

29. In this regard, the Court finds that the Respondent is estopped by promissory estoppel from raising or pleading limitation. Time started to run from the date the judgment in the criminal trial was pronounced.

30. The Preliminary Objection is thus rejected and the Court orders that the Cause should proceed to hearing on the merits.

Delivered, dated and signed in open Court in Mombasa on this 8th day of September 2014.

Radido Stephen

Judge

Appearances

Ms. Tsuma instructed by Wamalwa, Abdi & Co. Advocates for Claimant

Mr. Otieno instructed by Omondi Waweru & Co. Advocates for Respondent