



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 955 OF 2013

JOYCE KAMENE KYAMBI.....CLAIMANT

VS

NODOR KENYA EPZ LIMITED.....RESPONDENT

RULING

1. This ruling emanates from a preliminary objection taken by the Respondent by notice dated 25th March 2014, seeking dismissal of the Claimant's claim on the ground that it is statute barred by dint of Section 90 of the Employment Act, 2007.
2. In its submissions filed on 2nd September 2014, the Respondent submits that the cause of action arose on 16th February 2010 when the Claimant's employment was terminated. It follows therefore that the Claimant's claim which was filed on 24th June 2013 was outside the three year limitation period provided under Section 90 of the Employment Act, 2007. Consequently and since the Claimant did not seek leave to file his claim out of time, the Court lacks the jurisdiction to entertain the claim.
3. In reply the Claimant submits that he filed his claim without undue delay. He adds that Article 159 of the Constitution enjoins the Court to administer justice without undue regard to procedural technicalities. The Claimant urges the Court to overrule the Respondent's preliminary objection and proceed to hear his claim on merit.
4. The law on limitation of time in employment and labour litigation is well settled. For causes of action arising before 2nd June 2008 being the effective date of the Employment Act, 2007 the applicable law would be Section 4(1) of the Limitation of Actions Act while those accruing after the effective date would be governed by Section 90 of the Employment Act, 2007. The Claimant's claim which arises from the termination of his employment on 16th February 2010 falls under the latter category.
5. Section 90 of the Employment Act, 2007 provides as follows:

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”
6. Following this provision, the Claimant's claim ought to have been filed by 15th February

2013. The claim filed on 24th June 2013 is therefore clearly out of time.

7. The Claimant submits that limitation of time is a matter of technicality under Article 159 (2) (d) of the Constitution, 2010 and should not therefore be applied to defeat his claim. Courts have however consistently held that the issue of limitation is a substantive matter that goes to the jurisdiction of the Court (see *Peter Nyamai & 7 Others Vs M.J. Clarke Limited [2013] eKLR* and *Thuranira Karauri Vs Agnes Ncheche [1997] eKLR*).

8. In light of the foregoing I find that the Claimant's claim was filed out of time and this Court therefore lacks jurisdiction to entertain it. The final result is that the

Claimant's claim is dismissed with no order for costs.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF NOVEMBER 2014

LINNET NDOLO

JUDGE

Appearance:

Mr. Munene for the Claimant

Mr. Gitonga Mureithi for the Respondent