



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

**CAUSE NO. 1224 OF 2010**

**EMMANUEL J. ODERO.....CLAIMANT**

**VERSUS**

**SPIN KNIT LIMITED.....RESPONDENT**

**Mr. Wesonga for Respondent / Objector**

**M/S Lumumba for Claimant / Respondent**

**RULING**

1. The Respondent filed a Notice of Preliminary Objection to this suit dated 25<sup>th</sup> February, 2014.
2. The Objection is on the ground that the Claim was filed out of time contrary to the mandatory provisions of **Section 90** of the **Employment Act, 2007**. The Objection is opposed via a Replying Affidavit of Akoth Lumumbah, the Advocate for the Claimant.
3. The suit was initially filed at the Chief Magistrate's Court as **Case No. 10229 of 2007**. At the time the **Employment Act** was not operational. On 14<sup>th</sup> June, 2010, the Claimant withdrew the Suit from the Chief Magistrate's Court and the same was filed at the Industrial Court on 8<sup>th</sup> October, 2010.
4. From the particulars of Claim, the cause of action arose sometime in December 2006, when the Respondent failed to pay the Claimant's salary for the month of December, 2006.
5. The Claimant alleges that he was constructively dismissed from employment due to the omission by the Respondent. He claims December salary in the sum of Kshs.34,634.26, Gratuity for seven (7) years service, payment in lieu of 64 days leave, two months salary, in lieu of notice and compensation for the unlawful dismissal.
6. It is trite law that prior to the enactment and coming into effect of the **Employment Act, 2007**, limitation of employment disputes was governed by the **Limitation of Actions Act Cap 22** of the **Laws of Kenya**.
7. **Section 14** thereof provided for limitation period of six (6) years with respect to matters founded on contract. This being the case, this suit was filed well within the limitation period of six (6) years.
8. The objection is misconceived and same is dismissed with costs to the Claimant. The matter to take its normal course.

**Dated and Delivered at Nairobi this 10<sup>th</sup> day of December 2014**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**