



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAKURU

CAUSE NO. 489 OF 2014

PATRICK SIKUKU WEKESA.....CLAIMANT

v

EGERTON UNIVERSITY CURRENTLY LAIKIPIA UNIVERSITY.....RESPONDENT

RULING

1. The Claimant sued the Respondent on 7 October 2014 seeking Kshs 450,000/- allegedly deducted from his wages from 1 May 2009, on account of loss of Kshs 900,000/- through fraud attributed to him, and Kshs 150,000/- being hardship allowance for period March 1997 to June 2004 and from September 2007 to September 2010.
2. The Respondent filed a Response on 7 November 2014 and one of the defenses raised was that the claim for hardship allowance was time barred by virtue of section 90 of the Employment Act, 2007 and that the Claimant was not an employee of Laikipia University hence there was misjoinder of parties.
3. The parties addressed the Court on the questions of limitation and misjoinder on 27 November 2014.
4. Mr. Mukira for the Respondent submitted that pursuant to section 90 of the Employment Act, 2007 the aspect of claim relating to hardship allowance was statute barred as it was commenced after 7 years after cause of action arose. He urged that this was not a case of a continuing injury.
5. Mr. Mukira further submitted that there was misjoinder of parties and issues. He stated that no claim had been made against Egerton University, which should be the right party.
6. Mrs. Ndeda in response submitted that the union to which the Claimant was a member and the Respondent had been communicating in regard to the hardship allowances upto 2007 and that the deductions were made up to 2009.
7. On the joinder question, Mrs. Ndeda made reference to Legal Notice No. 157 of 2009 which made Laikipia University College a successor to Laikipia Campus of Egerton University and submitted that it assumed all its rights, liabilities and assets.
8. The Memorandum of Claim herein is quite wordy and it needs some keen reading to ascertain exactly the facts constituting the cause of action.
9. In regard to the limitation question, the Court notes that some of the heads of claim are based on causes of action accruing and predating the Employment Act, 2007. The Act commenced on 2 June 2008.

10. The Respondent founded its limitation objection solely on section 90 of the Employment Act, 2007. Section 90 of the Act would therefore not be the only applicable statute.
11. It would require the Court to delve into questions of facts and evidence to establish which facts are affected by the Employment Act, 2007 and other limitation statutes.
12. It would not be prudent for the Court to enter into that discussion under the guise of a preliminary objection or attempt to sever the causes of action at the interlocutory stage.
13. On the issue of joinder, the Court will need to delve into evidence to ascertain the correct position. That exercise removes the present objection from the realm of a true preliminary objection.
14. The preliminary objection is dismissed. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 11th day of December 2014.

Radido Stephen

Judge

Appearances

For Claimant Mrs. Ndeda instructed by Ndeda & Associates

For Respondent Mr. Mukira instructed by Mwangi Mukira & Co. Advocates