



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 394 OF 2013**

**BENEDICT MBEVI MUTUA .....CLAIMANT**

**VERSUS**

**KENYA PIPELINE COMPANY LIMITED .....RESPONDENT**

**RULING**

Benedict Mbevi Mutua the Claimant herein filed this case against the Respondent Kenya Pipeline company Limited by Memorandum of Claim dated 21<sup>st</sup> March and filed in court on 25<sup>th</sup> March 2013. The claimant alleges that the Respondent summarily terminated his employment on 18<sup>th</sup> May 2009. He seeks terminal benefits in the sum of Kshs.891,940, costs and interest. The Claimant filed his claim through the firm of Wagara, Koyyoko & Company Advocates.

The Respondent filed a Memorandum of Response on 19<sup>th</sup> June 2013 through the firm of Albert Muma & Co. Advocates. In the Response the Respondent admitted summarily dismissing the claimant, but denied that the dismissal was unprocedural. The Respondent avers in the Response that the Claimant admitted the charges preferred against him by the Respondent and the Claimant was dismissed after a full disciplinary process in compliance with the provisions of the Employment Act.

Together with the Memorandum of Response the Respondent filed a Notice of Preliminary Objection on the grounds that:

1. The claim as filed does not lie in law by virtue of Section 90 of the Employment Act, 2007.
2. This Court lacks the requisite jurisdiction to entertain, hear and/or determine this matter.

The Respondent prayed that the claim be struck out and dismissed with costs to the Respondent.

When the case came up for hearing on 28<sup>th</sup> July 2014 the parties agreed to proceed with the preliminary objection by way of written submission. The Respondent was to file their written submissions within 14 days while the Claimant was to file submissions 14 days from date of service. The case was fixed for mention on 23<sup>rd</sup> September 2014 to confirm compliance and take a date for the ruling.

On 23<sup>rd</sup> September 2014 the Respondent had not filed submissions and was granted leave to file within 3 days while the claimant was to file 14 days from date of service.

The case was mentioned again on 15<sup>th</sup> October 2014 when the Respondent confirmed filing on that day. Claimant was given 14 days to file.

When the case was mentioned on 10<sup>th</sup> November 2014, there was no appearance for the Claimant although the date had been taken in court by consent. There being no appearance for the Claimant and no submissions filed on the Claimant's behalf, I decided to proceed to prepare the ruling without the Claimant's submissions.

The Respondent submitted that Section 90 of the Employment Act provides for a limitation period of 3 years, that in the pleadings in paragraphs 3, 6, and 10 of the Memorandum of claim the Claimant stated that his employment was terminated on 18<sup>th</sup> May 2009 while the claim was filed on 25<sup>th</sup> March 2013, which is more than 3 years after the cause of action arose.

The Respondent relied on the Court of Appeal decision in the case of *Langat v. Kenya Posts and Telecommunications Corporation* (2000) IEA 147 when the court stated as follows:

*“It is plainly obvious from this section that appointment, discipline and dismissal of staff is an act done by the Kenya Posts and Telecommunications Corporation in pursuance of execution of the Act within the meaning of Section 109 thereof. It must follow from this that if the Appellant wished to contest his dismissal by Kenya Posts and Telecommunications Corporation **he had to institute proceedings within the time frame fixed under Section 109 of the Act. He did not. nor did he institute the action within twelve months from the date of his dismissal. The result of this default is that the suit brought by the Appellant was incompetent and did not lie.**”*

The Respondent submitted that the case having been filed outside the limitation period should be struck out with costs.

The Respondent also referred to the case of *Lloyd's v Butler* (1949) 2 AELR 227 and this court's decision in *Josephat Ndirangu v Henkel Chemicals (EA) Limited* in which the court reiterated the position as follows:

*“This court has in the recent past dealt with the question whether it has power to extend time. The court's answer and what I understand to be the correct legal position is that the court has no jurisdiction to extend time to commence claims arising out of contract, employment contract included once time has lapsed. Similar principles to what the Court of Appeal stated (*Divecon vs Samani*, (1995-1998) EA 48) about section 4(1) of the Limitations of Actions Act apply in respect of Section 90 of the Employment Act and I would for the sake of clarity state that no employee has the right or power to bring after the end of three years from the date of dismissal or termination, an action founded on a contract of services and that the Industrial Court has no right or power to entertain such claims or extend time for bringing such actions”.*

The Respondent submitted further that once a claim is filed after expiry of the limitation period the court lacks jurisdiction to entertain the matter. The Respondent further submitted that limitation is a matter of law and once a court finds that it has no jurisdiction it must down its tools as was stated in the case of *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Limited* (1989) KLR I “*jurisdiction is everything, and without it the court must down its tools*”.

The Respondent relied on the cases of; **Mary Wambui Munene v Peter Gichuki Kingara** and **Samuel v SBI International Holdings (AG) Case No. 91 of 2013**, both of which dealt with the issue of limitation of actions.

I agree with the Respondent. The claim by the Claimant is on the face of it, bad in law as it is time barred having been filed outside the limitation period of 3 years as provided in Section 90 of the Employment Act. No explanation has been given to justify the filing out of time and no extension of time has been sought. Infact, the claim does not refer at all to the filing out of time.

As stated in the many authorities cited by the Respondent, this court has no jurisdiction to hear and determine a claim filed out of time. The court must therefore down its tools.

The result is that the claim herein is struck out for being time barred and therefore bad in law.

Each party shall bear its costs.

Orders accordingly.

**Dated in open court this 5<sup>th</sup> day of December, 2014.**

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

**In the presence of:**

**Agwara for the Respondent**

**No appearance for the Claimant**