



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT MOMBASA**  
**CAUSE NO. 23 OF 2014**

**CHARLES MUSA KWEYU .....CLAIMANT**

**VERSUS**

**WANANCHI MARINE PRODUCTS [K] LTD .....RESPONDENT**

**R U L I N G**

**INTRODUCTION**

1. The respondent in the main suit has raised a Preliminary Objection (P.O) to the suit and prayed for the same to be struck out for being time barred. The basis of the P.O is that the cause of action arose on 28/2/2009 and the suit was filed on 6/2/2014.
2. The P.O was disposed of by written submissions filed in court on 27/10/2014 and 7/11/2014 by the respondent and claimant respectively.

**ANALYSIS AND DETERMINATION**

3. Upon careful perusal and consideration of the pleadings and submissions filed and there is no dispute that there existed an employment contract between the two parties herein between 6/2/2009 and 28/2/2009. It is also clear that the respondent raised P.O to the suit vide paragraph 9 of the response to the claim which prompted the claimant to amend his claim by deleting paragraph 7 which had pleaded the date when the cause of action arose. That conduct is mischievous on the part of the claimant and his counsel and intended to force a trial on suit through hook and crook. The amendment came after the P.O had already been raised and it did not alter the witness statement and the demand letter filed together with the claim which indicated that the employment contract was terminated on 28/2/2009.
4. The only issue for determination in the P.O is whether filing the suit on 6/2/2014 was out of time. The answer is yes because under Section 90 of the Employment Act, a suit based on Employment contract must be filed within a period of 3 years after the cause of action arises. In this case, the period between 28/2/2009 and 6/2/2014 is 5 years. Consequently the court finds and holds that the suit is time barred within the meaning of Section 90 of the Employment Act. It is trite that the court has no jurisdiction to entertain a time barred suit.

**DISPOSITION**

5. For the reasons aforesaid, the P.O succeeds and the entire suit is hereby struck out with no order as to costs.

**Dated, signed and delivered this 5<sup>th</sup> December 2014.**

**O. N. Makau**

**Judge**