



REPUBLIC OF KENYA

Industrial Court of Kenya

Miscellaneous Application 10 of 2011

ZADOCK O. OLOO.....CLAIMANT

VS

DENHILL ENGINEERING..... RESPONDENT

Amadi for Claimant
Juma for Respondent

RULING

This matter was filed before the Chief Magistrate’s Court Milimani on 29th October, 2007 as Cause No. CMCC 948/07. The cause of Action arose on 11th April 2006 when the employment of the plaintiff was allegedly unlawfully terminated by the defendant.

On 23rd May, 2011, the Chief Magistrate made an order directing the matter be filed at the Industrial Court asserting that it was the proper court to handle the matter. The Industrial Court Misc. Appl. No. 10 of 2011 was filed accordingly on 6th September, 2011 which is five years and 5 months after the cause of action arose.

At the time the cause of action arose, the current Employment Act, 2007 had not been enacted and the law applicable to employment disputes then was the Employment Act, Cap.226 (now repealed).

As I stated in Industrial Court Cause No.1075 of 2010 and in the Industrial Court Cause No.375 of 2011 Daniel Songa Sila –Vs- Property Development & Management Ltd, the erstwhile Act did not have a limitation clause as is the case with Section 90 of the Employment Act, 2007.

This being the case the present dispute is governed by the Limitations Act, Cap 22 of the Laws of Kenya and in particular Section 4(1) thereof which provides:-

“the following actions may not be brought after the end of six (6) years from the date on which the cause of action accrued:-

- (a) *Actions founded on contract may not be brought after the end of six (6) years from the date on which the cause of action accrued.*
- (b) *Actions to recover a sum recoverable by virtue of a written law, other than a penalty of forfeiture.*
- (c) *Actions including relief for which no other period of Limitations is provided by this Act or by any other written Law”.*

This provision covers the present suit as it is founded on contract and/or claims recoverable by virtue of written Law.

The court finds therefore that the Limitation period applicable to this suit is six (6) years from the date on which the cause of action arose and therefore was filed at the Industrial Court within the Limitation period.

The Application dated 6th September, 2011 is dismissed with costs and the suit should take its normal course.
It is so ordered.

DATED and **DELIVERED** at Nairobi this 13th day of March, 2013.

Mathews N. Nduma
PRINCIPAL JUDGE