



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 10 of 2013

JOEL MURIUKI YAMBO.....CLAIMANT

Versus

NAIROBI BOTTLERS LIMITED.....RESPONDENT

RULING

1) *The Claimant filed an Originating Summons under Section 84, the Fifth Schedule of the Labour Relations Act and the inherent jurisdiction of the Court seeking the grant of leave to initiate a Claim against the Respondent. The Applicant based his application on various grounds, chief among then the following:-*

i. *THAT the requisite period for filing proceedings has expired due to circumstances beyond the Applicant's control;*

ii. *THAT in the circumstances, it is only fair and just that the Applicant be granted leave to file the intended suit out of time.*

2) *It was urged for the Applicant that the dismissal of the Claimant's Claim in December was on a technicality. Mr. Wanyama for the Claimant thus urged the Court to grant the Orders sought.*

3) *It has been held that limitation goes to jurisdiction. In the case of **Thuranira Karauri v. Agnes Ndeche [1997] eKLR** the Court of Appeal held as much. In the celebrated case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** the Court of Appeal held as follows (per Nyarangi JA)*

'I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'

4) *The authority for this holding by the learned Judge is found in the writings of John Beecroft Saunders in **Words and Phrases Legally defined** – Volume 3: I – N which at page 113 states the following about jurisdiction:-*

“By jurisdiction is meant the authority which a court

has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

5) I agree with the Court of Appeal's decision in the case of **Thuranira Karauri v. Agnes Ndeche [1997] eKLR** where the Court of Appeal held that **the issue of limitation goes to jurisdiction**. This was the position taken in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya)** (supra). Jurisdiction is everything, without it, I can do nothing.

6) In this case, the Applicant seeks to enlarge time and yet the Court (Rika J.) dismissed the Applicant's suit after the issue of limitation was broached in Cause 302 of 2012. The judge held that the Claim was in violation of Section 90 of the Employment Act. Section 90 provides as follows:-

90. Notwithstanding the provisions of section 4 (1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

7) *The Limitation of Actions Act Section 4 provides as follows:-*

4. (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued -

(a) actions founded on contract;-

This is the portion referred to in Section 90 of the Employment Act.

8) *I therefore find that there is nothing that would allow me to admit the Claim. The Applicant's Application fails. In the final result the Originating Summons is struck out with costs.*

It is so ordered.

Dated and delivered at Nairobi this **30th** day of **April** 2013

Hon. Mr. Justice Nzioki wa Makau
Judge