



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 511 of 2010

TITUS GATHUO NJOROGE.....
CLAIMANT

VS

THE CHAIRMAN OF THE BOARD OF GOVERNORS
OF MUHOHO HIGH SCHOOL.....
RESPONDENT

Mr. Lutta for the Claimant

Mr. Nduati for Respondent

RULING

This matter was first filed before Magistrate's Court as MCC 2831 of 2002 on 7th April, 2002. It was part heard when the Employment Act No.11 of 2007 was enacted.

The Magistrate hearing the matter at the time decided that the court no longer had jurisdiction to continue hearing the matter and directed the same be transferred to the Industrial Court.

Pursuant to the order of the Magistrate, the Claimant filed this suit on 10th May, 2010. The Respondent did not file a response to the claim on the merits within 14 days prescribed under Rule 13(1) of the Industrial Court (Procedure) Rules 2010. Instead, the parties embarked on an effort to settle the matter out of court which did not bear fruit.

On 30th August 2010, the Respondent filed a Notice of Preliminary Objection without leave of court notwithstanding that time within which the Respondent should have responded to the claim had long lapsed.

The Respondent pleads that the suit is statute barred because the cause of action arose on 4th June 2001 and Section 90 of the Employment Act No.11 of 2007 provides that;

“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 of default complained of in the case of continuing injury or damage within twelve months next after the cessation thereof.”

He submitted therefore that the suit was statute barred upon expiry of 3 years from the date the

cause of action arose on 4th June, 2001.

Mr. Nduati for the Claimant ably argued, which submissions the court agrees with that during the time the matter was pending at the Magistrate's Court, time did not run because it was before a court of competent jurisdiction.

Indeed, it is the court's view that the Magistrate's Court should have continued to hear the matter to its conclusion the same having been filed in 2002.

The errors of the Magistrate's Court, which includes inordinate delay in concluding the matter cannot be visited on the Claimant who had lawfully brought the matter before it.

Accordingly, time stopped running on 7th April 2002 when the matter was filed before the Magistrate's Court who has now transferred the same to the Industrial Court.

The suit is not time barred and the same will take its normal course. The same be mentioned for purpose of taking a hearing date.

It is so ordered.

DATED and DELIVERED at Nairobi this 10th day of April, 2013.

Mathews N. Nduma

PRINCIPAL JUDGE