



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 30 of 2012

SAMUEL CHEPKWONY.....
.....CLAIMANT

VS

KENYA WILDLIFE SERVICES.....
.....RESPONDENT

Kosero for Applicant/Claimant
M/S Luta for the Respondent

RULING

The Applicant filed a Notice of Motion seeking leave to file this claim out of time.

The grounds for the Application are that;

The claimant was wrongfully dismissed by the Respondent on 4th October 2007 without payment of terminal benefits on allegations of collusion with other parties to defraud the Respondent of Park Entry Revenue.

The Claimant was subsequently charged with a Criminal Offence but was acquitted for want of evidence. That since his dismissal, the Claimant was diagnosed with acute depression and has been bed ridden and in and out of hospital since then and the Respondent took advantage of his illness to deprive him of his terminal benefits. The Claimant got a doctor's recommendation to resume normal duties in May, 2012.

He now seeks extension of time in terms of Section 26 of the Limitation of Actions Act, Cap.22 of the Laws of Kenya.

The Respondent has filed grounds of objection to wit;

1. The Application is frivolous, vexatious and an abuse of the court process.
2. The court has no jurisdiction to allow extension of time to institute this claim out of time.
3. The suit is statute barred and no valid reasons have been adduced by the Claimant. He had time to file a claim but did not.

On 10th August, 2008 he appeared before the Appeals Board of the Respondent in person and on 23rd June 2009, he received a Banker's Cheque with respect to a staff pension scheme with NIC for Kshs.80,048/=. It is clear therefore, he suffered no disability during that time.

From the Respondent's admission, the appeal process with regard to the Claimant's dismissal took place on 10th August, 2008. Although we do not have evidence when the appeal was determined, at least we know the cause of action crystallised after the appeal process was concluded after that date.

The law applicable to this claim with regard to the limitation period is Section 90 of the Employment Act which came into effect on 22nd October, 2007.

The Section reads;

“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”.

This provision takes precedence over the provisions of the Limitations of Actions Act, Cap.22 of the Laws of Kenya with regard to claims arising from employer and employee relationship.

The Section does not allow extension of time upon expiry of 3 years from the date the cause of action arose except in the case *“of continuing injury or damage”*, in which case, a claim maybe instituted within 12 months next after the said injury or damage ceases.

In terms of the Memorandum of Claim, the Claimant seeks payment of salary in lieu of notice and 12 months' compensation for unlawful termination of employment.

These claims are based on contract of employment and the provisions of the Employment Act, No.14 2007. Section 90 of the Act applies to this matter squarely and the provisions of the Limitations of Actions Act regarding extension of time do not avail the claimant herein.

If this were not the case, the claim having been brought within 6 years from the date the cause of action arose is well within the time limits provided under Section 4(1) of the Limitation of Actions Act. No application for extension of time would have been necessary.

Section 90 of the Employment Act, is couched in mandatory terms leaving the court with little option if at all. The court would in the circumstances require very compelling reasons to deviate from the express wording of this provision. This is not the case in this particular matter.

The court in the circumstances dismisses the Application with no order as to costs.

It is so ordered.

DATED and DELIVERED at Nairobi this 22nd day of May, 2013.

Mathews N. Nduma

PRINCIPAL JUDGE - INDUSTRIAL COURT