



**REPUBLIC OF KENYA**

**Industrial Court at Nairobi**

**Cause 1046 of 2012**

HUMPHREY MAIKUMA HOLI .....CLAIMANT

**VERSUS**

DE LA RUE CURRENCY AND SECURITY PRINT LIMITED.....RESPONDENT

*Rika J  
CC. Leah Muthaka*

*Mr. Ojiambo holding brief for Mr. Munoko instructed by Ameyo Guto, Etole & Company Advocates for the Claimant*

*Mr. Muchiri instructed by Daly Figgis Company Advocates for the Respondent*

**RULING**

The Respondent has raised a preliminary challenge to the validity of the claim. The Claimant was an employee of the Respondent. His contract of employment was terminated on 31<sup>st</sup> October 2008. Termination was justified on the ground that the Claimant was arrested and charged for the offence of attempted murder; grievous harm; and malicious damage to property. He allegedly stabbed Ms. Valerie Butiko, an employee of the Respondent.

He filed this claim on 19<sup>th</sup> June 2012. The Respondent submits that the claim was filed in contravention of the Law in Limitation of employment actions, contained in Section 90 of the Employment Act 2007.

The Claimant's response is that the Court is under duty to administer justice without procedural technicalities, as stipulated in Article 159 (2) (d) of the Constitution of Kenya. Secondly, the Respondent has no reason to hastily conclude that the Claimant is guilty for the criminal offences under trial, and terminate the Claimant's contract of employment.

Parties agreed to have the preliminary challenge determined on the basis of written submissions, which have been placed on record.

*The Court Finds and Orders:-*

1. The claim was filed out of time. It has no legal validity. The Court does not have the jurisdiction, under Section 90 of the Employment Act 2007 to hear and determine claims filed in defiance of limitation of time.
2. Section 90 of the Employment Act 2007 is not a mere procedural rule. It confers substantive rights on

the employee to initiate a claim within the specified period, and on the employer not to be vexed with such a claim, upon the lapse of the specified period. The rule governs the temporal jurisdiction of the Court. A matter that touches on the jurisdiction of the Court cannot be said to fall within the category of procedural technicalities, under Article 159 (2) (d) of the Constitution.

3. The Employment Act 2007 does not require employers to await the decisions of Criminal Courts, in taking out disciplinary proceedings against employees, based on the facts in issue at the criminal trial. The criminal process is a public process, while the disciplinary process is a private mechanism.

4. The termination of the Claimant's contract of employment did not amount to a criminal finding of guilt. The right to be presumed innocent under Article 50 (2) (a) of the Constitution, relates to the criminal trial facing the Claimant. It is unrelated to the disciplinary process.

5. The record does not show anything to suggest that the dispute was filed in this Court, pursuant to Rule 6 of the Industrial Court (Procedure) Rules 2010. There is no report by the Conciliator of a conciliation process, supported by minutes of conciliation meetings. There was no certificate of conciliation issued by any Conciliator under Section 69 (a) of the Labour Relations Act No. 14 of 2007, filed with the claim. The Claimant failed to show that delay in coming to Court resulted from any other dispute resolution processes. He opted instead to concede he came to Court late, holding that objection on the ground of late filing should be taken as an issue of undue regard to technicality.

***IT IS HEREBY ORDERED:-***

- (a) The Preliminary Objection is allowed;
- (b) No order on the costs.

Dated and Delivered at Nairobi this 7<sup>th</sup> day of June 2013

James Rika  
Judge

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