



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 808(N) OF 2009

ANNE WAITHERA KIMANI.....CLAIMANT

VS

STEPHEN NDUNGU NJENGA.....RESPONDENT

RULING

Introduction

1. On 18th December 2009, the Claimant filed a Memorandum of Claim vide which she sued the Respondent for terminal benefits and other unpaid dues. The Respondent filed a Memorandum of Reply on 22nd March 2010 and on 3rd August 2010, he filed a notice of Preliminary Objection on the ground the Claimant's claim was time barred by dint of Section 90 of the Employment Act, 2007.

The Respondent's Submissions

2. Mr. Nyabena for the Respondent submitted that the cause of action in this case arose on 6th December 2003, being the date of the Claimant's resignation. The claim was filed on 18th December 2009 more than six years from the date the cause of action arose.

3. Mr. Nyabena told the Court that even if the Employment Act, 2007 was not in existence at the time the cause of action arose, the Limitations of Actions Act was fully applicable to the Claimant's case. Therefore since the Claimant did not seek leave to file the case out of time, the same should be struck out with costs to the Respondent.

The Claimant's Reply

4. Miss Amboko for the Claimant submitted that the cause of action in the Claimant's case arose in 2003 before enactment of the Employment Act, 2007 which did not apply retrospectively. Counsel referred the Court to Article 159(2) (d) which enjoins courts to render justice without undue regard to procedural technicalities.

Ruling of the Court

5. In order to determine this matter, I need to rule on the applicable limitation law. It is not in

contest that the Claimant resigned from the Respondent's employment on 6th December 2003. According to correspondence produced by the Respondent, the resignation took effect on 5th January 2004. Logically, this would be the date the Claimant's cause of action accrued.

6. The Court therefore finds that at the time the cause of action arose, the Employment Act, 2007 was not in force. The applicable limitation law is therefore the Limitations of Actions Act.

7. Section 4(1) of the Limitations of Actions Act provides that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued. Taking 5th January 2004 as the accrual date, the Claimant's claim which was filed on 18th December 2009 is within the six year period under Section 4(1) of the Limitations of Actions Act.

8. I therefore find the Preliminary Objection not well taken and hereby overrule it. The costs of this application will be in the cause.

Orders accordingly.

DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF JULY 2013

LINNET NDOLO

JUDGE

In the presence of:

In the Presence of:

.....*Claimant*

.....*Respondent*