

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 140 OF 2013

ALLAN MWASOKE CHECHA & OTHERSCLAIMANT

VERSUS

M.J. CLERK LTDRESPONDENT

RULING

This is a ruling on a Preliminary Objection (P.O.) filed on 3/7/2013 by the respondent challenging the claimants suit for being filed out of time.

The P.O. came up for hearing on 17/7/2013 when the parties agreed to dispose it of by way of written submissions. As at the time when the court went to write the ruling only the respondent had filed her submissions. It would appear that the Preliminary Objection was not opposed by the claimants.

The gravamen of the P.O. Is that the suit herein was filed out of time in view of Section 90 of the Employment Act 2007 which limits the period for employment claims to 3 years. That such statutory period is not extendable. In the present case the cause of action arose in February 2006 and according to the respondent the claimants had upto February 2009 to bring this suit.

The court disagrees with that view because the cause of action arose before the 2007 Employment Act, hence the claimant had the right to sue upto a period of 6 years under Section 4 of the Limitations of Actions Act Cap 22 Laws of Kenya. That means that the claimant had upto February 2012 to file their claim.

However they waited upto June 2013 to bring the suit which was over one year late. Whichever way you look at it, whether under Section 90 of the Employment Act 2007 or Section 4 of the Limitations of Actions Act, the suit was filed out of time.

It follows therefore that the suit is declared incompetent and bad in law. That incompetence due to statutory limitations goes to negate the courts jurisdiction over the suit. Consequently the suit is struck out with no orders as to costs.

Signed, dated and delivered this 26th August 2013

ONESMUS MAKAU

JUDGE