

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 202 OF 2013

MOHAMMED OMAR DOYOCLAIMANT

VERSUS

1. KENYA SAFARI LODGES & HOTELS
2. ATTORNEY GENERAL.....RESPONDENTS

RULING

The claimant filed this suit on 29/8/2012 claiming terminal dues for unlawful termination of employment by the respondent on 5/5/2004. The respondent did not file any defence to the suit but a notice of Preliminary Objection (PO) on the ground that the suit was time barred under Section 90 of the Employment Act 2007. The application was disposed of by way of written submission.

I have perused the claim and considered the submissions filed. I have also considered Section 90 of the Employment Act and Section 4 of the Limitation of Action Act Cap 22 Laws of Kenya. The former provisions limits the period for instituting claims based on employment to 3 years while the latter provisions limits the said period to six years. Under the two provisions the claimants suit is definitely time bared. I agree with the submissions by the defence that the suit ought to have been filed earlier than 8/8/2012.

I also agree with the defence and the Judicial pronouncements of my brothers Rika J, and Radido J, in the authorities cited by the defence that the right to sue by the claimant had already been extinguished as at the time of filing the suit. This court takes the view that where the right to sue has been extinguished due to time limitation, the court also loses jurisdiction over any suit that may be founded on the extinguished cause of action. Consequently, the suit herein is declared time barred and struck out with no order as to costs.

As a way of parting short the court has noted pleadings for suit number RMCC 924 of 2008 annexed to the memorandum of the present claim. The court was not told anything about the said lower court suit which seems to be the reasons for the claimants woes. May be the claimant might wish to follow up the matter with his advocates to revive it if at all it has any chances.

Signed, dated and delivered this 27th September 2013

ONESMUS MAKAU

JUDGE