



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1296 of 2010**

**STEPHEN NDUNGU KARIUKI.....CLAIMANT**

**VERSUS**

**G4S SECURITY SERVICES LIMITED.....RESPONDENT**

**RULING**

The Claimant filed his claim on 25-10-2010 seeking to recover Kshs.234,756.00 being his Employment Service Gratuities from the Respondent. The Respondent has opposed the claim vide a Notice of Preliminary Objection on grounds that the claim is time barred and that the Claimant's rights to sue for the alleged breach of contract had lapsed and therefore, he lacks capacity to sue the Respondent.

The Preliminary Objection was argued before Justice S.M. Madzayo who is no longer in the Station on 12-4-2011.

Mr. Ochieng prosecuted the Preliminary Objection on behalf of the Respondent. He submitted that the cause of action arose on 18-8-1999 upon termination of the Claimant's services. That the applicable law to the claim is the Employment Act, Cap.226 which is now repealed and Section 4(1) of the Limitation of Actions Act. Under the said law, a claim based on a contract like in the present case lapsed after six (6) years. That the Claimant knew his right to sue but squandered it. He relied on *CACA 144 of 1999 Langat Vs Kenya Posts and Telecommunications Corporation* to persuade the Court to allow the Preliminary.

In response, Mr. Oluga for the Claimant opposed the Preliminary Objection. He conceded that the Contract was terminated on 18-8-1999 but argued that there was protracted correspondences, the last being 15-3-2005. He relied on *HCCC 834 of 2002 Motex Knitwear Ltd -Vs- Gopitex Knitwear Mills Ltd.*, and urged the court to dismiss the Preliminary Objection because the suit was not time barred under Section 4(1) of the Limitation of Actions Act and Section 93(1) of the Employment Act, 2007 which came into force on 2-6-2008.

I have carefully perused the Memorandum of Claim and the supporting exhibits. I have also considered the submissions by the Learned Counsel for the two parties including various authorities cited. It is obvious that the dispute concerns employment and, therefore this court has the necessary jurisdiction to entertain it. The issue for determination is whether the claim was filed out of time and by a Claimant whose right to sue had lapsed.

It is not in dispute that the contract of employment was terminated on 18-8-1999. To that extent, the date that the cause of action arose is as clear as day time in the Equator.

It is also not in dispute that the law applicable to this dispute is Employment Act, Cap.226 and the Limitation of Actions Act, Cap.22. The former Act was repealed in 2007 by the Employment Act, 2007 which reduced the Limitation period for employment contracts to 3 years.

Section 4(1) of the Limitations Act provides for the Limitation period of contractual claims of six (6) years. The present cause of action arose on 18-8-1999 meaning that the claim lapsed on 18-8-2005.

I do not agree with the interpretation by Mr. Oluga that the cause of action arose on any other date other than 18-8-1999 when the contract was terminated. To that extent, I find that the precedent cited (HCCC 834 of 2002) distinguishable with the present case. In that case, the court found that the cause of action arose on the date when the defendant wrote a letter acknowledging that he had repudiated the contract in issue as opposed to the date when the contract had been entered into.

I also find that Section 93 of the Employment Act 2007 not relevant to this dispute because by the time it came into force both the contract in issue and the cause of action had already lapsed.

I, therefore agree and hold that the claim before the court was filed out of time without leave of the court and is therefore bad in law for being time barred. From 18-8-1999 to 25-10-2010 when the claim filed is about eleven (11) years which ought to have been explained vide an application for leave to sue out of time.

As regards the second ground for the Preliminary Objection, I agree with the Respondent that the Claimant's capacity to sue the Respondent on the cause of action, lapsed when the claim became time barred. I also find that filing the claim eleven (11) years after accrual of the right to sue is abuse of the process of the court.

**Accordingly, I strike out the claim with no order as to costs.**

**Orders accordingly.**

**DATED and DELIVERED at Nairobi this 26<sup>th</sup> day of October, 2012.**

**Onesmus Makau**  
**JUDGE**