



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1467 of 2011**

**JEREMIAH OJWANG OJAK.....CLAIMANT**

**VS**

**CENTRAL BANK OF KENYA.....RESPONDENT**

**RULING**

Mr. Onyiembo for the Claimant

Mr. Ngugi for the Respondent

The Claim was filed on 29<sup>th</sup> August, 2010 seeking various reliefs arising from alleged unlawful and unfair dismissal that took place on 8<sup>th</sup> October, 2004.

The Respondent filed a Statement of Response to the Claim on 10<sup>th</sup> September, 2011.

On 16<sup>th</sup> September, 2011 the Respondent further filed an objection in *limine* to wit; that the matter is statutorily time barred by dint of the provisions of Section 90 of the Employment Act, 2007 and thus fundamentally flawed, misconceived and incompetent.

The issue of Statutory bar goes to the jurisdiction of the Court to entertain a matter and thus it is proper that the same “be raised at the earliest opportunity and the court seized of the matter is obliged to decide the issue right away on the material before it”. See *Owners of the Motor Vessel “Lillian S” V Gatel Oil (Kenya) Ltd Civil Appeal No.50 of 1989* at pg.14.

Section 90 of the Employment Act, 2007 reads:-

*“Notwithstanding the provisions of Section 4(1) of the Limitations of Actions Act, no civil action on proceedings based or arising out of this Act or a Contract of Service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”*

The matter giving rise to this suit was the dismissal of the Claimant on 8<sup>th</sup> October, 2004. The Law applicable to dismissal of an employee at the time was the Employment Act, Cap.226 of the Laws of Kenya. This piece of legislation was repealed by Section 92(1) of the Employment Act, 2007 without savings. Section 93(1) of the 2007 Act, however provided that the contracts of service entered into in

accordance with the repealed Act would continue in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of the 2007 Act.

As I stated in the *Industrial Court of Kenya Cause No.374 of 2011, Daniel Songa Sila Vs Property Development Management Ltd*;

*“It follows that the Employment Act, 2007 was not meant to operate retroactively and is not applicable to contracts of employment that had been terminated before its enactment and operationalization”.*

The Employment Act, 2007 is therefore not applicable to the suit in *casu* and the same is governed by the provisions of the repealed Employment Act, Cap.226 of the Laws of Kenya. Cap 226 did not have a limitation clause and therefore the law applicable to the issue of limitation is the Limitation of Actions Act, Cap. 22 of the Laws of Kenya.

The claim before the Court is founded on a contract of Employment and part of the remedies sought are statutory in nature. Section 4(1) of Cap.22 provides a statutory bar of 6 years for Actions founded on Contract and Actions to recover a sum recoverable by virtue of a Written Law. See *Zakaria Liambu Andika Vs Cheer Logic Management Consultants Ltd.*, in *Industrial Court of Kenya Cause No.1075 of 2010* at pg.3.

The present matter was filed on 29<sup>th</sup> August, 2011 well over 6 years after the cause of action arose on 8<sup>th</sup> October, 2004.

The Claimant did not seek extension of time before filing the Statement of Claim nor is there an application before the court for extension of time.

In the matter of *Gathoni V/S Kenya Co-operative Creameries Limited, Civil Appl. No.NAI 22 OF 1981, 1982 ECLR*, the Court of Appeal observed *“the Law of Limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence to take reasonable steps in his own interest”.*

The matter having been filed outside the limitation period, the Court lacks jurisdiction to entertain it and the same is dismissed with no order as to costs.

**DATED** and **DELIVERED** at Nairobi this 28<sup>th</sup> day of November, 2012.

**Mathews N. Nduma**

**PRINCIPAL JUDGE**