



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 1725 OF 2017

JOYCE MIDEVA MAVISI.....CLAIMANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

JUDGEMENT

1. The respondent raised in *limine* the objection that the suit herein as statute barred. According to the respondent, the claimant was retired in the interest of the respondent on 30th May, 2011 hence the suit herein ought to have been filed by 30th May, 2014 yet the same was filed on 31st August, 2017. This according to the respondent was outside the timeline set by Section 90 of the Employment Act.

2. The claimant on the other hand contended that the preliminary objection was being raised to delay the case. According to the claimant's counsel, the claimant sought damages for malicious prosecution which was within the jurisdiction of the court. He contended that the claimant was charged vide criminal case No. 1895 of 2010 and was acquitted on 3rd November, 2015

3. He contended that the claimant was charged vide criminal case No. 1895 of 2010 and was acquitted on 3rd November, 2015. Concerning the termination, the claimant received a letter of retirement in the authorities' interest on 30th May, 2011, she appealed against the decision but the appeal was dismissed on 20th March, 2016. According to counsel time began to run from the date of dismissal of the appeal.

4. It is indeed correct that the court lacks jurisdiction to entertain a suit filed contrary to section 90 of the Act. However the claimant herein was retired in the interest of the respondent on 30th May, 2011. She appealed against the decision and the decision on her appeal was made on 20th March 2016 some six years later.

5. This court as a matter of practice will not entertain a suit where internal mechanisms for settling such a dispute have not been exhausted. This practice is sound as premature invocation of the court's jurisdiction not only clogs the court with disputes which would have otherwise been resolved or simplified if the internal mechanisms were exhausted but also not an economical use of judicial time.

6. To borrow from the Fair Administrative Action Act, under section 9(2), a court shall not review an administrative action or decision under the Act unless mechanisms including internal mechanisms for appeal or review and all remedies available under any written law are first exhausted.

7. The claimant herein exercised her rights as provided for under respondent's internal procedures. The respondent took approximately six years to decide the claimant's appeal. They cannot therefore be heard to invoke section 90 of the Employment Act to plead limitation yet they failed to expeditiously determine the claimant's appeal. The six year period that the respondent took to decide the claimant's appeal cannot therefore be reckoned in deciding if the suit is caught up by limitation. The claimant's cause of action accrued on 20th March, 2016 when her appeal was dismissed. The claim herein having been filed on 31st August, 2017 is therefore within limitation period contemplated by section 90 of the Act.

8. The preliminary objection is therefore found without merit and is hereby disallowed.

9. It is so ordered.

Dated at Nairobi this 30th day of November, 2018

Abuodha Jorum Nelson

Judge

Delivered this 30th day of November, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.