



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1299 OF 2013

JOHN KAHATO BARI) All suing on behalf of themselves and as
JAMES WACIURI) representatives of all former employees
BENARD KANADA) of the cooperative Creameries Limited as per
JACKSON WARUI) the schedule of names.....**CLAIMANTS**

VERSUS

NEW KENYA CO-OPEERATIVE

CREAMERIES LIMITED.....1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

M/s Abok for 1st Respondent/Objector

Mr Namada for Claimant

RULING

1. The 1st Respondent raised a preliminary objection to the suit to the effect that the same is time barred by the virtue of section 90 of the Employment Act 2007.
2. The suit against the 1st and 2nd Respondents arise from a failure by the 1st Respondent to pay the Claimant's proceeds of a judgement and decree in the case between Kenya Union of Commercial Food & Allied Workers –Vs- Kenya Co-operative Creameries Ltd (the Predecessor of the 1st Respondent) being Industrial Cause No 24 of 1998.
3. In the judgement the court found that the Claimants were entitled to payment of Kshs 109,640,482/= being their terminal benefits. The Claimants have sought the payment in vain.
4. There cannot be a time bar in payment of a decretal sum in terms of section 90 of the Employment Act, 2007. In any event the provision is not applicable to a matter that arose before the law was enacted.
5. The non-payment constitutes a continuous injury to the claimants and the same is not time barred.
6. With regard to contribution to the provident fund in the sum of Kshs 2,027,622.5 and non-remitted SACCO dues in the sum of Kshs 92,803,451 these are matters of fact that will be canvassed at the hearing of the suit and are not pure points of laws to be canvassed as preliminary objections. In any event if indeed funds held in trust by the 1st Respondent on behalf of its employees continue to be unremitted to the lawful beneficiaries, there cannot be statutory bar to a claimant for the

- funds if unlawfully held by the Respondent.
7. This constitutes a continuous injury in terms of section 90 of the Employment Act 2007.
 8. For these reasons the preliminary objection is misconceived and is dismissed with costs. Matter to take its normal course.

Dated and delivered at Nairobi this 18th day of March 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE