



Kenya Union of Commercial Food and Allied Workers v Director General/CEO, Kenya National Library Service (Cause E129 of 2024) [2025] KEELRC 358 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 358 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E129 OF 2024
CN BAARI, J
FEBRUARY 13, 2025

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

THE DIRECTOR GENERAL/CEO, KENYA NATIONAL LIBRARY SERVICE RESPONDENT

RULING

Introduction

1. For determination is the Respondent's Notice of Preliminary Objection dated 22nd April, 2024. The Objection is premised on the ground that the Claimant's Statement of Claim is time barred per Section 90 of the *Employment Act*, and thus the Court has no Jurisdiction to hear and determine the matter.
2. The Respondent further argues that pursuant to Gazette Notice Number 6024 of 10th June 2018, the matter ought to have been filed before the Magistrate Court, since the Claimant was earning less than Kshs. 80,000/= and hence, again, the Court has no Jurisdiction to hear the matter.
3. It then seeks that for the reasons enumerated herein, the claim be struck out with costs.
4. The Claimant opposed the objection vide a Replying Affidavit dated 5th June 2024 sworn by one James Muriuki Njue.
5. The Court directed parties to file submissions on the preliminary objection, and both parties filed written submissions.



The Respondent's Submission

6. The Respondent submits that Section 90 of the [Employment Act](#) is framed in mandatory terms, and a claim based on a contract of employment or labour relations, must be filed within 3 years. It submits further that this Court is denied jurisdiction to extend time to file suits not lodged with the court within 3 years from the date the cause of action arose.
7. It is the Respondent's further submission that the acts complained of by the Claimant, are alleged actions/inactions of the Respondent in paying arrears, which allegedly accrued between May 2016 and March 2020, and which position the Claimant reiterated in its replying Affidavit sworn in opposition to this objection.
8. The Respondent placed reliance in the case of *Michira & 41 others v Aegis Kenya Ltd t/a Leopard Beach Hotel* (Cause E088 of 2023) [2023] KEELRC 2551 (KLR) (19 October 2023), for the holding that;

“The cause of action arises with end of employment. The last day the employee exits the shop floor, any accruing dues must to addressed within 3 years, any continuing injury must be addressed within 12 months.”
9. The Respondent states that the Claimant retired on 3rd March 2020, and which position is not disputed, and whose implication is that any Claim ought to have been filed by 3rd March 2023, hence the claim filed herein is therefore time barred.
10. It is the Respondent's submission that the claim is time barred even though the Claimant seeks to refer to subsequent letters after he left employment.
11. The Respondent urges court to allow the objection as prayed.

The Claimant's Submissions

12. The Claimant states that the grievant tendered a request dated 4th September, 2019, for an early retirement due to poor health, and that the request was approved to take effect from 3rd March, 2020. It is its position that it has not challenged the grievant's early retirement or claim associated with the said early retirement or payment of this retirement benefits.
13. The Claimant states that its claim arises from the June 2012-July,2013, July,2013-June-2017and July 2017-June,2021 Collective Bargaining Agreements whose negotiations delayed partly due the involvement of the Salaries & Remuneration Commission and their necessary advice and approvals, which did not come on time as was expected.
14. It states further that the Collective Bargaining Agreements were registered with the 2017-2021 Collective Bargaining Agreement having been registered on 16th October, 2021 paving way for its implementation in December, 2021.
15. It is the Claimant's position that the financial implication arising from the said Collective Bargaining Agreements were approved on 22nd December, 2021 authorizing the Respondent to make payments.
16. It states that the grievant who had waited for payment of his arrears similar to other employees, only realized that when all other employees were paid in December, 2021, his arrears had not been factored in for payment.



17. That limitation of action would therefore be considered from December, 2021 when the Respondent declined to pay the claims now in dispute, upon which three years would lapse on 21st December, 2024.
18. It avers that the Statement of Claim dated 15th February, 2024 was lodged in Court on 19th February, 2024, and that summons dated 28th February, 2024 were issued within a period under three years.
19. That from the foregoing explanation, the Court has jurisdiction to hear and determine the claim on its merits.
20. On whether the claim should have been filed before the Magistrate court, the Claimant submits that the Claim having gone through conciliation as a Trade Dispute under the *Labour Relations Act*, 2007, it is not in any way affected by the Kshs.80,000/= salary limit, and could not therefore have been lodged at the Court below under the Gazette Notice referred to by the Respondent.
21. In conclusion, the Claimant urges the Court to find that the Preliminary Objection is not merited and the same ought to be disallowed with an order that the dispute do progress to hearing and determination on its merit.

Determination

22. The legal position regarding Preliminary Objections was well laid out in the celebrated case of Mukisa Biscuit Manufacturing Co. Ltd –vs West End Distributors Ltd (1969) EA 696, where the court held as follows:-

“ a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”
23. The Preliminary Objection herein, is premised on two grounds; one is a plea of limitation premised on Section 90 of the *Employment Act*, 2007, which without doubt is a pure point of law and which if proved, has the potential to dispose of the suit without the need for a further hearing. The second concerns the place of filing suit premised on a gazette notice which delegated certain matters within the jurisdiction of this court to the Magistrates Court, and which is equally a issue of law.
24. Section 90 of the *Employment Act* 2007, provides as follows on filing of employment related claims;

“Notwithstanding the provisions of section 4 (1) of the *Limitation of Actions Act*, no civil action or 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.”
25. The Respondent’s argument is that the grievant requested to retire early from the service of the Respondent on the ground of ill health, and which request was accepted effective March, 2020. It argues further, that the cause of action herein, arose on the date the grievant’s early retirement took effect rendering his claim statute barred as at March, 2023.



26. On its part, the Claimant asserts that its claim arises from the June 2012-July,2013, July,2013-June-2017and July 2017-June,2021 Collective Bargaining Agreements whose negotiations delayed partly due the involvement of the Salaries & Remuneration Commission and their necessary advice and approvals which did not come on time as was expected. That the Collective Bargaining Agreements were registered with the 2017-2021 Collective Bargaining Agreement having been registered on 16th October, 2021 paving way for its implementation in December, 2021.
27. From the record, it is evident that employees of the Respondent were paid CBA arrears on the registration of the CBAs for the period, 2017-2021. It is also clear that the CBA was registered on 16th October, 2021, and took effect in December, 2021.
28. As correctly submitted by the Claimant, the benefits sought in the claim herein, only became payable on the registration of the CBA and not at the time of the grievant's retirement, hence the cause of action could not have accrued on his retirement.
29. It then follows that the cause of action having accrued in December, 2021, and the claim herein filed in February, 2024, that the suit is not statute barred.
30. On whether the matter herein ought to have been filed before the Magistrates' court, the record shows that the issues subject of the claim were placed before a conciliator and had gone through conciliation as a Trade Dispute under the Labour Relations Act, 2007. It is also true that the suit herein was lodged by a union on behalf of a member which in every sense, shows that the claim is a trade dispute and not an ordinary claim as to be affected by the Kshs.80,000/ = salary limit.
31. I conclude by finding that the suit is properly before this court and the court is seized of jurisdiction to hear and determine the same.
32. In the end, I find the Respondent's Objection devoid of merit, and is dismissed with costs to the Claimant.
33. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

C. N. BAARI

JUDGE

Appearance:*

Mr. Muunda h/b for Mr. Nyumba for the Claimant

Mr. Okech Present for the Respondent

Ms. Esther-C/A

