



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Engineering Workers Union v Gahir Engineering Works Ltd (Cause
E059 of 2024) [2025] KEELRC 1106 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1106 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E059 OF 2024
CN BAARI, J
APRIL 4, 2025

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
GAHIR ENGINEERING WORKS LTD RESPONDENT

RULING

1. Before Court is the Respondent's Preliminary Objection dated 19th July, 2024, seeking dismissal of the Claimant's suit on the following grounds:-
 - i. That the suit as filed is a non-starter, frivolous, scandalous, vexatious and fatally defective ab initio since the firm of Claimant herein has no locus standi/legal capacity to file the suit for and on behalf of the Complainant since there does not exist any Collective Bargaining Agreement and/or any proper legally binding Collective Bargaining Agreement between the parties herein, and none has been availed before court.
 - ii. That the suit has not been filed before the proper Court noting that the grievant's monthly basic salary was Kshs.27,741/= and therefore this court lacks jurisdiction by virtue of Gazette Notice No.6024 (CXX No.74) dated 22 June 2018 by which the Hon. Chief Justice mandated that in cases where the salary of the Claimant does not exceed Kshs. 80,000/ the subordinate court shall be clothed with jurisdiction to handle the matter.
 - iii. That no proper suit exists in this matter because this court lacks jurisdiction to hear and determine this matter since any disputes between the parties was to be referred to the proper court by the proper parties since there is no contract of employment between the Claimant and the Respondent herein.
 - iv. That the suit is time barred and infringes upon the provisions of Section 89 of the [Employment Act](#) since termination of employment was done on 12th January 2021.



- v. That consequently, the entire suit is frivolous, an abuse of the court process and ought to be dismissed with costs to the Respondent forthwith.
2. Parties canvassed the objection by way of written submissions.

The Respondent's submissions

3. It is the Respondent's submission that the Claimant has not demonstrated that it has recognition with the Respondent and thus lacks standing to institute the suit which should be struck out in limine with costs to the Respondents. The Respondent submits further that for reason that the Claimant failed to avail the CBA, it is estopped from relying on it, and that the court should proceed on the presumption that the CBA does not exist.
4. The Respondent submits that the authorities relied upon by the Claimant in their submissions, being Nakuru CMCC No. 61 of 2018 Engineering Workers Union v Rift Valley Engineering Limited, Karen Blixen Camp Limited v Kenya Hotel & Allied Workers Union and Kenya Union of Printing Publishing, Paper Manufacturers, Pulp & Packaging Industries v Raffia Bags (EA) Limited [2014] eKLR, are distinguishable, since in all these three cases, there existed a valid CBA duly adopted by the courts.
5. In support of their foregoing assertion, the Respondent had reliance in the case of Communication Workers' Union v Safaricom Limited [2014] eKLR where the court faced with a similar objection on locus standi of the Claimant trade union to file suit stated inter alia;

“The question here with regard to locus standi is that the Claimant union has no recognition with the Respondent and even where such recognition is lacking; there is no CBA between the parties to regulate terms and conditions of work. Without recognition by an employer, a trade union, even where registered as such, becomes a by-stander waiting by the road side for instructions.”
6. It submits that the case before this court is a claim for wrongful termination of employment and the period for actions founded on such claims is three years. It is further submitted that the Claimant's action, being one founded on wrongful termination, became statute barred on 11th January, 2024.

The Claimant's Submissions

7. The Claimant submits that the parties herein, have negotiated several Collective Bargaining Agreement (CBAs) signed under Section 57(1) of *Labour Relations Act*, and the same registered by Court pursuant Section 60(1) of *Labour Relations Act*.
8. It is its submission that a dispute between trade Unions and Employers can only be entertained by the Employment and Labour Relations Courts and not the Magistrates Courts which only has Jurisdiction to hear and determine employment and Labour disputes between employees and employers and not trade Unions.
9. The Claimant submits further that the Respondent's assertion that the Claimant Union has no right to Represent or to file suit on behalf of its members has no merit, and goes against Section 22 of the *Employment and Labour Relations Court Act* 2016 which provides that the Union is empowered to represent it's members.
10. The Claimant prays that the preliminary objection be dismissed.

Determination



11. I have considered the Respondent's objection together with the rival submissions. The issues for determination are:
 - i. Whether the Claimant has locus standi to institute this suit
 - ii. Whether the court has jurisdiction to hear the matter on account of gazette notice No.6024(CXXNo.74) dated 22nd June 2018
 - iii. Whether the suit is statute barred.
12. In the case of *Mukisa Biscuits Manufacturing Ltd. v West End Distributors Ltd.* Civil Appeal No. 90 [1969] EA 696, the court set the threshold for a preliminary in the following words:-

“A preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

"A preliminary objection, is in the nature of what used to be called a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."
13. The Respondent's contention on the issue of locus standi, is that the Claimant does not have legal capacity to institute this suit on the basis that there does not exist a Collective Bargaining Agreement and/or any proper legally binding Collective Bargaining Agreement between the parties herein, and none has been availed before court. The Respondent further avers that the Claimant has not demonstrated that it has recognition agreement with the Respondent, and thus lacks standing to institute the suit which should be struck out with costs.
14. On its part, the Claimant avers that the parties herein, have negotiated several Collective Bargaining Agreement (CBAs) signed under Section 57(1) of *Labour Relations Act*, and registered by Court pursuant Section 60(1) of *Labour Relations Act*.
15. In the case of *Priscilla Jesang Koech v Rebecca Koech & 3 Others* [2018] eKLR the court held thus:-

“Locus Standi is the cornerstone of any case, and before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued.”
16. The Respondent has vehemently denied having a recognition agreement with the Claimant. The Claimant has not placed before court either the CBA or a recognition agreement between itself and the Respondent.
17. The *Labour Relations Act* defines a recognition agreement as an agreement in writing made between a trade union and an employer, regulating the recognition of the trade union as the representative of the interests of the unionisable employees employed by the employer.
18. A recognition agreement confers legitimacy and determines the scope of trade union's activities in the work place. In the case of *Kenya Shipping, Clearing and Warehouses Workers Union v Bobmil Industries Limited* [2013] eKLR, the Court opined that rights such as reasonable access to the employer's premises, right to negotiate and the right to locus standi to report a trade dispute or commence legal proceedings on behalf of the employees amongst others, can only be conferred on a union by a recognition agreement.



19. Membership which usually is between an employee and a union, similarly confers on a trade union the right to represent employees as individuals on work place issues.
20. A determination of whether or not the grievant herein is a member of the Claimant's union, is in my view a question of fact which can only be determined in a full hearing, and not through a preliminary objection such as the one before me. Preliminary objections should only arise on pure points of law and not where facts need to be ascertained.
21. On whether the court has jurisdiction to hear this matter on account of gazette notice No.6024(CXXNo.74) of 22nd June 2018, the court in the case of Law Society of Kenya v Malindi Law Society & 6 Others [2017] eKLR, held that disputes between trade unions and employers can only be entertained by the Employment and Labour Relations Court, and that the Magistrate Court only has jurisdiction to hear and determine employment and labour disputes between employees and employers and not trade unions.
22. Finally, on the question of whether or not the suit herein is statute barred, the record shows that the grievant was locked out of the Respondent's premises on resuming duty on 12th January, 2021, and which is the date that the Respondent has used to compute the 3-year limitation period.
23. Section 90 of the *Employment Act*, 2007, states:-

“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.”
24. By the foregoing provision, time limitation is no doubt a point of law which if determined has the potential to dispose of the suit. In his pleadings, the Claimant states that the grievant was locked out of the office on 12th January, 2021, issued with a show cause letter on 14th January, 2021 and invited to attend a disciplinary hearing on 19th January, 2021. The Claimant does not proceed to say when the grievant was terminated and the show cause letter has not been produced in evidence as to prove to court that the process could have extended beyond 19th January, 2021.
25. What is in the court's record, is a letter by the union to the Cabinet Secretary for Labour dated 9th February, 2021, reporting a trade dispute, a demand letter dated 1st February, 2021 to the Respondent which indicates a date for a meeting to discuss the lock out of the grievant. All these events resulted from the grievant's lock out from office.
7. In *Peris Maina v Nairobi City Water & Sewerage Company Limited* [2018] eKLR, Ongaya J stated as follows on when time starts to run in employment related disputes:-

“As submitted for the Respondent, the administrative appeal proceedings did not postpone or adjourn the running of the time of limitation after the dismissal...”. This position was again affirmed in the case of *Hilarion Mwabolo v Kenya Commercial Bank* (2013) eKLR, where the court stated that:-

“... termination kicks in from the date stated in the termination letter...”
26. In my view, the day when the grievant was locked out of the Respondent's premises, is the day when the cause of action accrued, as the subsequent events could not postpone the running of time.



27. It then follows, that if the cause of action accrued on 12th January, 2021 and this suit was lodged on 24th January, 2024, the same is time barred by about 12 days.

28. In *G4S Security services (K) Limited v Joseph Kamau & 486 Others* [2018] eKLR, the Court of Appeal stated:-

“Of the 469 Respondents, the right to sue for alleged terminal dues for 464 Respondents lapsed and they therefore have no capacity to bring causes against the Appellant in respect of their termination of employment....”

29. In whole, I find the Claimant’s claim statute barred and is hereby struck out with no orders on costs.

30. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH DAY OF APRIL, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Patrick Makale h/b for Mr. Araka for the Claimant

Mr. Omondi present for the Respondent

Ms. Esther S - C/A

