



Adera & another v Anti-Counterfeit Authority; Salaries & Remuneration Commission (Interested Party) (Employment and Labour Relations Cause E6503 of 2020) [2024] KEELRC 39 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 39 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6503 OF 2020
MN NDUMA, J
JANUARY 25, 2024

BETWEEN

JOHNSON OTIENO ADERA 1ST CLAIMANT

NAYLOR SHIVACHI MUKUFU 2ND CLAIMANT

AND

ANTI-COUNTERFEIT AUTHORITY RESPONDENT

AND

SALARIES & REMUNERATION COMMISSION INTERESTED PARTY

RULING

1. The suit was filed vide a statement of claim on 30/11/2020. The claimants are employees of the respondent and remained so at the time of filing suit.
2. The facts of the suit set out vide paragraph 8 of the statement of claim are that the claimants enjoyed the non-practice allowance from July 2016 and 1st July 2018 respectively.
3. That the respondent wrote to the claimants by a letter dated 18/1/2020 that the legal personnel including the claimants are not eligible for payment of non-practising allowance and so the respondent was to stop paying the said allowance. The court enjoined the intended decision by the respondent in its ruling dated 31/5/2021 and so the claimants continue to enjoy the said allowance.
4. The respondent informed the court that the claim was time barred and from the submission filed by the respondent the basis of the objection is that the claimant accepted the offer of employment on 17/10/2011 and was appointed from the said date whereas the 2nd claimant was appointed on 3rd May 2018 and accepted the contract of employment on 7/5/2018. That the two contracts did not offer the claimants' non-practicing and prosecutorial allowance and so the cause of action arose from the two



said dates which dates are way out of the 3 years limitation period provided under Section 90 of the [Employment Act, 2007](#).

5. The respondent in paragraph 9 of the statement of response admit the claimants are currently being paid non-practising allowance.
6. The claimants at paragraph 35 of the statement of claim seek a declaration that the respondent's letter dated 18th November 2020 advising that legal personnel working for the respondent are ineligible for non-practising allowance is unlawful, wrongly and unfair.
7. On the basis of this prayer alone, the suit having been filed on 30/11/2020 is not time barred having been filed on the same month the cause of action arose.
8. On the issue of prosecutorial allowance which was not paid to the 1st and 2nd claimants from outset, the claimants seek a further declaration that the conduct by the respondent of not paying the prosecutorial allowance is unlawful. This cause of action is also not time barred. The court upon adjudicating the matter if it finds in favour of the claimants would then determine the effective date of payment of prosecutorial allowance.
9. The preliminary objection is misconceived in respect of the two reliefs sought by the claimants and is dismissed with costs in the cause.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JANUARY, 2024

Appearances:-

Mr. Odukenya for respondent/objector

Mr. Kenyatta for claimants

Ekale, Court Assistant

