



Ohanya v International Peace Support Training Center (Cause E274 of 2023) [2024] KEELRC 337 (KLR) (26 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 337 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E274 OF 2023
JK GAKERI, J
FEBRUARY 26, 2024**

BETWEEN

BONIFACE KADENGE OHANYA CLAIMANT

AND

INTERNATIONAL PEACE SUPPORT TRAINING CENTER RESPONDENT

RULING

1. Before the court for determination is the Respondent's Notice of Preliminary Objection dated 14th July, 2023 praying that the Statement of Claim be dismissed with costs on the ground that;

The cause of action is time barred pursuant to Section 3(3) of the [Public Authorities Limitation Act](#), Cap 39 Laws of Kenya.

2. The Respondent did not file submissions in support of the Preliminary Objection.

Claimant's submissions

3. The Claimant's counsel submitted that the suit was filed within the stipulated time frame of 3 years as provided by the provisions of Section 90 of the [Employment Act](#), 2007.
4. Reliance was made on the decision in *Michira & 41 others v Aegis Kenya Ltd t/a Leopard Beach Hotel* [2023] eKLR to reinforce the submission as were the provisions of Section 57 of the [Interpretation and General Provisions Act](#) on the computation of the 3 years limitation period.
5. Counsel submitted that when the Claimant reported to work on 4th April, 2020, he received a notice compelling him to report to the Embakasi Police Station and on reporting on 6th April, 2020, he was detained for 7 days without any charges.
6. Counsel further submitted that as the Claimant reported to work on 4th April, 2020 and the suit was filed on 4th April, 2023, the suit was not statute barred.



Determination

7. The singular issue for determination is whether the Respondent's Notice of Preliminary Objection is merited.
8. Before delving into the merits of the Notice of Preliminary Objection, it is essential to determine whether the Respondent's Notice of Preliminary Objection meets the threshold of a Preliminary Objection as enunciated in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 where Law J.A stated as follows;

“ . . . a Preliminary Objection consists of a pure point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point will dispose of the suit. Examples are an objection to jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”
9. In the words of Sir Charles Newbold V.P;

“ 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 has to be ascertained or if what is sought is the exercise of judicial discretion . . . ”
10. Needless to belabour, a Preliminary Objection is a threshold issue and when raised ought to be disposed of at the earliest possible instance as it has the potential to dispose of the suit before hearing and determination.
11. As the Respondent is objecting to the viability of the suit on account of limitation of actions, which implicates the jurisdiction of the court, the court is satisfied that the Notice of Preliminary Objection dated 14th July, 2023 is competent.
12. The Claimant alleges that he was employed by the Respondent in 2010 and worked till 6th April, 2020.
13. Strangely, the Claimant cannot recall the date or month when he joined the Respondent. He further alleges that when he reported to work on 4th April, 2020, he received a notice compelling him to proceed to the Embakasi Police Station for purposes of an injury into an alleged offence of stealing by servant and was detained for 10 days but no charges were preferred against him.
14. It is the Claimant's case that attempts to follow up on his employment fell through.
15. More puzzling, the only documentary evidence on record is the Claimant's Notice to compel attendance from the National Police Service whose date is unclear.
16. The notice required the Claimant to appear before CPL Mutuku at Embakasi Police Station on 6th April, 2020 at 10.00 am.
17. Intriguingly, the Claimant has not indicated as to when his employment was terminated by the Respondent.
18. Based on the allegations on record, the court is unable to decipher when the Claimant's cause of action against the defendant, if any, accrued, which can only be clarified by evidence at the hearing.



19. The court is persuaded that owing to the dearth of reliable and verifiable evidence, it is only fair that the Claimant be accorded the opportunity to prosecute his case and for the Respondent to avail its evidence in rebuttal.
20. Regrettably, the Respondent's Notice of Preliminary Objection lacks a credible factual foundation for sustainability.
21. In the end, the Respondent's Notice of Preliminary Objection dated 14th July, 2023 is unmerited and it is accordingly dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26TH DAY OF FEBRUARY 2024

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B** of the *Civil Procedure Act* (**Chapter 21 of the Laws of Kenya**) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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