



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya County Government Workers Union v Kiambu County Government & 2 others  
(Petition E060 of 2022) [2023] KEELRC 161 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 161 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E060 OF 2022**

**J RIKA, J  
JANUARY 31, 2023**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... PETITIONER**

**AND**

**KIAMBU COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**KIAMBU PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY SECRETARY, KIAMBU COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The petitioner filed this petition on April 8, 2022.
2. The petition is brought on behalf of 29 former employees of the defunct Karuri Town Council. It is stated that the employees joined the petitioner Union in 2014.
3. The employees were consequently victimized. Their wages were slashed. They eventually were locked out. The petitioner reported a trade dispute to the Ministry of Labour on May 15, 2015. Conciliation collapsed as a result of the respondents' unwillingness to submit to the process.
4. The petitioner seeks various declaratory orders, and demands access for its members, to their former place of work, and payment of salaries in arrears.
5. The respondents filed a notice of preliminary objection, dated September 29, 2022. They submit that the claim is time-barred, under section 4[1] [a] of the *Limitation of Actions Act*, No 12 of 2022, and section 90 of the *Employment Act*.
6. Parties consented to have the preliminary objection considered and determined on the strength of their submissions. They confirmed filing and exchange of submissions at the last mention, on November 23, 2022.



## The Court Finds

7. The petition is legally unsound, on various grounds.
8. It is indicated to be brought on behalf of 29 former employees of the defunct Karuri Town Council.
9. There are no details of the employees on whose behalf the petition is made.
10. Samuel Ng'ang'a, swore an affidavit on April 8, 2022 in support of the petition. He identifies himself as a former employee of Karuri Town Council and proceeds to depone on behalf of his unidentified colleagues. The court has not seen written authority signed by his colleagues, allowing him to give evidence on their behalf.
11. The petitioner states that it reported a trade dispute to the Ministry of Labour on May 15, 2015. Conciliation failed because the respondent did not submit to the process. At paragraph 17 of Ng'ang'a's affidavit he states that the conciliator certified the dispute to be unresolved.
12. The law stipulates under section 73[1] of the [Labour Relations Act](#), that if a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Industrial Court [E&LRC} in accordance with the Rules of the Industrial Court.
13. The petitioner ought therefore to have filed a claim in this court, under rule 5 of the [Employment and Labour Relations Court \[Procedure\] Rules, 2016](#). There is no reason why the petitioner deviated from the [Labour Relations Act](#), and filed this petition, 6 years after the conciliator, certified the dispute as unresolved. The [Constitution](#) is not a default mechanism, for correcting legal failures.
14. The petitioner does not disclose the exact date when the employees were allegedly locked out, to avoid being called out under the provisions of the law, cited in the preliminary objection. Paragraph 12 of Ng'ang'a's affidavit states that the employees were not told if they had been locked out or their contracts terminated.
15. Report to the Ministry, was made on May 15, 2015, which would mean that the cause of action predated May 15, 2015.
16. The petitioner seeks on behalf of its unidentified members, arrears of salaries and reinstatement. The remedies sought are pursuant to the [Employment Act, 2007](#). The dispute is about contracts of employment, which were terminated prior to May 15, 2015. The petitioner ought to have filed a claim within 3 years of the date of termination, or the alleged lockout, to be within the limitation period, under section 90 of the [Employment Act](#). Alternatively, the process under the [Labour Relations Act](#), ought to have been followed through to the end, instead of initiating a Petition, well over 6 years after the cause of action arose.
17. The court agrees that the petition is time-barred. The contracts of employment sought to be enforced cannot be enforced, by dint of section 90 of the [Employment Act](#). Both the cause and remedies have gone stale. For this reason and other infirmities discussed above, the petition must fail.

## It is Ordered.

- a. The preliminary objection is sustained.
- b. The petition is declined.
- c. Costs to the respondents.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,  
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31<sup>ST</sup>  
DAY OF JANUARY 2023.

JAMES RIKA

JUDGE

