



Kenya Union of Commercial Food and Allied Workers v Muruka Farmers Cooperative Society (Cause E010 of 2022) [2023] KEELRC 633 (KLR) (6 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 633 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E010 OF 2022
ON MAKAU, J
MARCH 6, 2023

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

MURUKA FARMERS COOPERATIVE SOCIETY RESPONDENT

RULING

1. This ruling relates to the Notice of Preliminary Objection dated 7th October ,2022 which raises the following grounds:
 - a. The court lacks jurisdiction to hear and determine the suit herein because it is time barred by didn't of section 90 of the *Employment Act*.
 - b. The court lacks pecuniary jurisdiction to hear and determine the suit herein by didn't of section 29 (3) of the *Employment and Labour Relations Court Act* as read with Gazette Notice No. 6024 of 10th June 2018.
 - c. The suit is otherwise an abuse of the Court process and therefore it should be dismissed with costs.
2. The objection was heard on 24th January 2023 when Mr. Muturi counsel for the respondent submitted that the cause of action in the suit arose in August 2018 and the suit was filed on 21st February 2022, more than 3 years. He cited the case of *Enock Angoya Obeba v Kenya Medical Training College* [2020] eKLR where the court held that time continues to run even when parties engage in out of court negotiations. Therefore he submitted that the suit is time barred
3. Further it was submitted that the grievants' gross monthly salary was less than Kshs. 80,000 and as such the suit ought to have been filed before the Senior Magistrates Court pursuant to Gazette Notice



number 6024 of 10th June 2018. Therefore the court was urged to find that it lacks Jurisdiction to determine the matter and proceed to dismiss the suit with costs.

4. Ms. Macharia for the claimant denied that the suit is time barred. She submitted that the cause of action arose on 7th February 2018 and the matter went for conciliation from 30th May 2019 to 15th June 2021. She explained that the delay in the conciliation was caused by the Covid-19 pandemic.
5. As regards the pecuniary jurisdiction, she submitted that the suit herein relates to a trade dispute which is excluded from the matters referred to Magistrates Court by the said Gazette Notice. She maintained that trade disputes are only dealt with by this court and therefore objection by the respondent should be dismissed.
6. In his rejoinder, Mr. Muturi contended that the said Gazette Notice refers to disputes on contract of employment. Further, referring a matter to conciliation does not bar a party from filing suit. He urged the court to dismiss the suit with costs.

Determination

7. The issues for determination are:
 - a. Whether the suit is time barred and the court lacks jurisdiction to entertain it.
 - b. Whether the court lacks pecuniary jurisdiction to entertain the suit.
8. The relevant law in this matter is Section 90 of the *Employment Act* which provides that:

“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 the case of continuing injury or damage within twelve months next after the cessation thereof.”
9. There is no dispute that the cause of action herein arose on 7th February, 2018 and the suit was filed on 21st February 2022. The 3 years within which to file the suit lapsed on 7th February 2021. Consequently, the court finds that the suit herein was filed more than one year after the lapse of the statutory period.
10. In the case of *Beatrice Kabai Adagala v The Postal Corporation of Kenya* [2015] eKLR the Court of Appeal held that:

“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the *Employment Act* 2007 which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within three 3 years. As the court stated in *Divecon Limited vs Samani* [1995-1998] 1 EA p. 48 ... the limitation period is never extended in matters based on contract.”
11. In consideration of the said mandatory provision and the above binding precedent, I find and hold that the suit is time barred and court lacks jurisdiction to hear and determine it. Consequently, I strike out the suit with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 6TH DAY OF MARCH, 2023.

ONESMUS N. MAKAU

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 April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

