



**Kenya Engineering Workers Union v Kenya General Industries Limited
(Cause E075 of 2022) [2023] KEELRC 1238 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1238 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E075 OF 2022**

**M MBARŪ, J
MAY 25, 2023**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
KENYA GENERAL INDUSTRIES LIMITED RESPONDENT**

RULING

- 1 The ruling herein relates to objections made by the respondent. Kenya General Industries Limited in the Statement of Response dated 11th April, 2023 at paragraph 18 and through Notice of Preliminary Objections dated 28th April, 2023 on the grounds that the suit is statute barred as per the provisions of Section 90 of the *Employment Act* and the court lacks jurisdiction to hear the claim.
- 2 On 2nd May, 2023 parties attended court and the claimant was allowed time to respond to the objections and to attend hearing on 16th May, 2023 but on the due date, no responses had been filed and the claimant failed to attend court. the respondent was heard on the objections.
- 3 The respondent submitted that in the Memorandum of Claim, the claimant has 3 grievants on the basis that;
 1. Jairus Achevi was employed on 1st October, 2011 to 6th September, 2019;
 2. Raphael Maghanga was employed on 1st July, 2007 to 21st December, 2018; and
 3. Mwamodi Shanga was employed on 1st January, 2003 to 16th August, 2019.
- 4 The claim was filed on 22nd September, 2022 over 3 years since employment terminated and even though a dispute had been reported to the Minister, the claim herein should have been filed in court within the provisions of Section 90 of the *Employment Act, 2007* (the Act). from the date the grievants' employment terminated it is over 3 years and the court lacks jurisdiction to hear and determine the claim and should be dismissed.



- 5 The respondent relied on the case of *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another* [2016] eKLR and in the case of *Kenya Airways Limited v Transport and Allied Workers Union* that even where parties engage in conciliation process, time does not stop running with regard to the application of Section 90 of the Act.
- 6 The claimant as a trade union is representing the 3 grievants Jairus Achevi, Raphael Maghanga and Mwamodi Shanga following a dispute with the respondent and the matter was reported to the Minister through various communications. The facts were that termination of employment was on 6th September, 2019, 21st December, 2019 and 16th August, 2018 respectively. The claim herein was filed on 22nd September, 2022.
- 7 Pursuant to the provisions of Section 90 of the Act, claims thereof ought to have been filed in court on or before 5th September, 2022, 20th December, 2022 and 15th August, 2022 respectively.
- 8 Employment for Jairus Achevi having terminated on 6th September, 2019 is time barred.
- 9 The claim by Raphael Maghanga whose employment was terminated on 21st December, 2018 is time barred.
- 10 The claim by Mwamodi Shanga whose employment terminated on 16th August, 2019 is time barred.
- 11 The respondent's case is that Raphael Mughanga retired on 21st December, 2018, and Jairus and Mwamodi both had term contracts which lapsed.
- 12 In the case of *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another* [2016] eKLR, the Court of Appeal while giving emphasis to the provisions of Section 90 of the Act with regard to parties who engage in conciliation before filing suit in court held that;
- 13 While there is no doubt that section 15 of the Employment and Industrial Relations Act encourages alternative dispute resolution, it must be court-based and conducted within the law. Time does not stop running merely because parties are engaged in an out of court negotiations. It was incumbent upon the respondents to bear in mind the provisions of section 90 of the *Employment Act* even as they engaged in the negotiations. The claim went stale three years from the date of the termination of the respondents' contracts of service.
- 14 Accordingly, pursuant to Section 90 of the *Employment Act*, 2007, the court is denied jurisdiction to hear and determine claims filed out of time. the claim herein is dismissed. Costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF MAY, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

.....and

