



**Kenya Building, Construction, Timber and Furniture Industries Employees Union v Singh  
(Cause 2014 of 2016) [2023] KEELRC 2158 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2158 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2014 OF 2016  
J RIKA, J  
SEPTEMBER 22, 2023**

**BETWEEN**  
**KENYA BUILDING, CONSTRUCTION, TIMBER AND FURNITURE  
INDUSTRIES EMPLOYEES UNION ..... CLAIMANT**  
**AND**  
**KARTAR SINGH ..... RESPONDENT**

**JUDGMENT**

1. This Claim was initiated by the Claimant Union on 29<sup>th</sup> September 2016, on behalf of its member Mutua Ngolo [Grievant].
2. Ngolo was employed by the Respondent as an ungraded mason, on 1<sup>st</sup> August 2007.
3. It is pleaded at paragraph 12 of the Statement of Claim, that Ngolo was “stopped from work, on 7<sup>th</sup> July 2012.”
4. The Respondent filed its Statement of Response on 20<sup>th</sup> December 2016, and a Notice of Preliminary Objection on 20<sup>th</sup> March 2023.
5. Objection is that the Claim is statute-barred, under Section 90 of the *Employment Act*.
6. The Claimant presented the Grievant before the Court, on 5<sup>th</sup> December 2022, when its case was heard and finalized.
7. The Notice of Preliminary Objection was filed on the eve of hearing of the Respondent’s case, scheduled for 22<sup>nd</sup> March 2023.
8. The Court directed that the hearing of the Respondent’s case shall proceed, and the belated Preliminary Objection argued jointly with the main Claim, through the Closing Submissions. The



Respondent closed its case on 22<sup>nd</sup> March 2023, and Submissions were confirmed to have been filed and exchanged at the last mention before the Court, on 14<sup>th</sup> July 2023.

9. The Respondent submits that the Claim was filed out of the 3-year statutory period, prescribed under Section 90 of the *Employment Act*. The Claimant submits that the Respondent failed to cross-examine the Grievant, and did not therefore, ascertain the exact date of termination. It is submitted by the Claimant that the Respondent pleads it did not employ the Grievant, and could not therefore, ascertain the date the cause of action arose.

### **The Court Finds**

10. There was no evidence required from the Respondent, to establish what is pleaded by the Claimant in plain terms, at paragraph 12 of the Statement of Claim:

“That it is for this reason, that culminated in stopping the Grievant from work, on 7<sup>th</sup> July 2012.”
11. The date of filing of the Statement of Claim, 29<sup>th</sup> September 2016, is also not disputed.
12. The two dates, 7<sup>th</sup> July 2012 and 29<sup>th</sup> September 2016, are undisputed, and are not facts which needed establishment, through any evidence from the Parties.
13. Parties are not allowed to plead facts, and then turn around alleging that the facts they have pleaded are disputed, when it suits then to have the facts deemed to be disputed.
14. The pleading by the Respondent that it did not employ the Grievant, and/or that he was subcontracted, does not affect the fact that the Claim herein is statute-barred. Parties are allowed to plead in the alternative.
15. From 7<sup>th</sup> July 2012, 3 years lapsed on 6<sup>th</sup> July 2015. The Claim was presented over 1 year late, in September 2016
16. It is dismissed with no order on the costs, under Section 90 of the *Employment Act*.

**DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2023.**

**JAMES RIKA**

**JUDGE**

