



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1324 OF 2018**

**(Before Hon. Lady Justice Anna Ngibuini Mwaure)**

**JOSEPH MUTUKU KYALO & 11 OTHERS.....CLAIMANT**

**VERSUS**

**DEVKI STEEL MILLS LIMITED.....RESPONDENT**

**RULING**

1. The Respondent is raising a preliminary objection before this Honourable Court in the following grounds:-

(a) That the Claimant's suit against the Respondent is time barred as whilst the alleged cause of action arose on 29<sup>th</sup> June, 2015 the claim was filed on 23<sup>rd</sup> August, 2018 which is outside the time limitations of 3 years provided by provisions of Section 90 of Employment Act 2007.

(b) That it is trite law that the Honourable court has no jurisdiction to enlarge time for filing of dispute emanating from employment and labour relations.

2. From the pleadings and submissions by the respective parties the Claimants were served with a redundancy notice/ outsourcing notice on 29<sup>th</sup> May, 2015. This notice gave rise to a suit number 1197 of 2015. **KENYA ENGINEERING WORKERS UNION VS DEVKI STEEL MILLS LIMITED** and court issued interlocutory orders on 9<sup>th</sup> July, 2015 after outsourcing process had taken effect and ordered the employees to remain in the employment pending hearing of the application.

3. The Claimants were reinstated as per the interim order of the Honourable Court. On 7<sup>th</sup> December, 2018 the court delivered a Ruling on the Case No.1197 of 2015 which was delivered in favour of the Respondents and so the suit was dismissed.

The Claimants were therefore locked out of the employment as by 20<sup>th</sup> December, 2015 and so the interim orders issued on 9<sup>th</sup> July, 2015 were discharged and Claimants were released to take up employment with the outsourcing company as per the outsourcing notice dated 29<sup>th</sup> May, 2015.

4. The Claimants thereafter filed suit dated 23<sup>rd</sup> August, 2018 and that suit is the bone of counterclaim in this preliminary objection.

**DECISION**

5. The Respondent avers that the claim filed on 23<sup>rd</sup> August, 2018 is time barred since the Claimant's notice of outsourcing/redundancy was issued to them on 29<sup>th</sup> May, 2015.

Their contention is that the suit should have been filed within date of notice on outsourcing which should have been on or before 29<sup>th</sup> May, 2018.

They submit that the suit is time barred according to Section 90 of Employment Act 2007.

6. The Claimants received the outsourcing notice on 29<sup>th</sup> May, 2015 but did not sign it. Instead a suit was filed by their union being cause Number 1197 of 2015. The court gave an order that the Claimants were to remain in their posts as it were.

7. They were therefore still in the employment of the Respondent until 20<sup>th</sup> December, 2015 when the court dismissed that case and so the orders were discharged.

8. The court has critically considered these facts and pleadings of all the respective parties and has come to the finding that since the Claimants were still in employment of the Respondent till 20<sup>th</sup> December, 2015 it was not necessary for them to file another suit.

9. In any case they must have been waiting the outcome of case No.1197 of 2015 and so when in case No.1197 of 2015 judgement was delivered they could proceed either way.

10. I am well convinced that the Claimants term started to run from 20<sup>th</sup> December, 2015 and so their suit is not time barred as provided in Section 90 of the Employment Act 2007.

11. I therefore dismiss the Respondents/Applicant's notice of preliminary objection dated 28<sup>th</sup> July, 2021 and allow the suit to proceed to full hearing on 24<sup>th</sup> March, 2022.

Parties to appear before the Deputy Registrar to take a hearing date.

Costs to abide the main suit.

Orders accordingly.

Delivered, dated and signed in Nairobi this 17<sup>th</sup> day of February 2022.

**ANNA NGIBUINI MWAURE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 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.

A signed copy will be availed to each party upon payment of court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**