



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**ELRC NO 288 OF 2017**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....APPLICANT**

**VERSUS**

**GROUP NINE SECURITY.....RESPONDENT**

**R U L I N G**

1. On 29<sup>th</sup> January, 2020 when this suit was slated for hearing the counsel for the respondent raised as preliminary an objection that the suit herein is statute barred. The court hence became of the view that since the issue of limitation goes to the jurisdiction of the Court it had to be considered first.

2. I therefore invited Mr. Omusundi for the respondent to submit on the issue and serve the Claimant for response. Counsel for the respondent however, never filed any submissions as directed. The court however considered the objection serious and called upon the Claimant to submit on the same even in the absence of submissions by the respondent.

3. The dispute herein concerns allegations of failure on the part of the respondent to pay statutory wages. According to the Claimant, the Minister through Uasin Gishu Labour Officer Mr. Boaz Musandu attempted to conciliate the parties but this failed due to lack of cooperation on the part of the respondent. On 8<sup>th</sup> September, 2016 the Conciliator issued a certificate of an unresolved dispute. This claim was subsequently filed on 11<sup>th</sup> October, 2016.

4. Failure to pay gazetted minimum wage is a continuing injury within the meaning of section 90 of the Employment Act. Limitation period begins to run from the point of cessation of such injury for twelve months.

5. The respondent herein has not alleged or shown that they paid or at some point began to pay gazetted minimum wage. In any event the respondent apart from merely raising the objection on limitation never prosecuted the same.

6. To this extent the Court has no material or proved facts that support the allegations of limitation.

7. The objections is therefore hereby dismissed and the matter shall therefore proceed to full trial on merits.

8. It is so ordered.

Dated at Eldoret this 12<sup>th</sup> day of **January**, 2021

**Abuodha Jorum Nelson**

**Judge**

Delivered this 12<sup>th</sup> day of **January**, 2021

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**