



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 87 OF 2019

KEROSI ONDIEKICLAIMANT

v

COUNTY ASSEMBLY SERVICE BOARD, KISII1st RESPONDENT

CLERK, COUNTY ASSEMBLY OF KISII2nd RESPONDENT

COUNTY GOVERNMENT OF KISII.....3rd RESPONDENT

RULING

1. Kerosi Ondieki (the Claimant) served as a Speaker, County Assembly of Kisii (the County Assembly) from 2013 to 2017.
2. On 4 October 2019, the Claimant sued the County Assembly Service Board, the Clerk of the County Assembly and the County Government of Kisii alleging breach of contract in respect to payment of house allowance, travel reimbursements, payment of non-practice allowance (prosecutorial allowance), continuous professional development and gratuity.
3. On 28 November 2019, the County Assembly Service Board and the Clerk filed a Notice of Preliminary Objection contending that:
 - (a) In so far as the suit relates to causes of action that have been continuing injuries or damages, this claim is time barred under the provisions of section 90 of the Employment Act of 2007. The Court therefore lacks jurisdiction to entertain this claim and the same ought to struck out with costs to the 1st and 2nd Respondents.
 - (b) The Claimant's rights to sue having lapsed, the Claimant lacks capacity to agitate any cause of action against the Respondents. The Claim is therefore an abuse of the court process.
4. The Court directed the parties on 11 March 2021 to file and exchange submissions on the Preliminary Objection within stipulated timelines (the County Assembly Service Board and the Clerk were to file and serve their submissions on or before 11 April 2021 and the Claimant and the 3rd Respondent to file and serve submissions before 11 May 2021).
5. The submissions were not on record by this morning.
6. By failing to file and serve submissions, the Respondents have failed to develop the proposition that the cause of action advanced by the Claimant constitute *continuing injury* within the context of section 90 of the Employment Act, 2007.
7. The Court will therefore not second guess the Respondents preliminary objection or speculate on the same.
8. Before making final orders, the Court notes that there is a question on the Respondents legal representation which they should resolve.
9. The Notice of Preliminary Objection is dismissed with costs to the Claimant.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF JULY 2021.

RADIDO STEPHEN,

MCIARB

Judge

Appearances

For Claimant Nyagaka S.M. & Co. Advocates

For Respondents Kennedy Chweya Onsembe, Office of the County Attorney, Kisii/Muchemi & Co. Advocates.

Court Assistant Chrispo Aura