



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 2016 OF 2016**

**KENYA BUILDING CONSTRUCTIONS TIMBER AND**

**FURNITURE INDUSTRIES EMPLOYEES UNION.....CLAIMANT**

**VERSUS**

**PAMIGO LIMITED.....RESPONDENT**

**RULING**

1. The respondent raised a Preliminary Objection to this suit that the same is time barred and offends the provisions of Section 90 of the Employment Act, 2007. That the Court lacks jurisdiction to entertain the same and it be struck out with costs.
2. The suit was filed on 29/9/2016 vide a Memorandum of Claim dated 29/9/2016. That the cause of action arose on 28/5/2013 when the grievant was dismissed from work without notice upon requesting the Managing Director to consider increasing his salary.
3. From the facts apparent from the claimant's pleadings, the suit was filed more than three (3) years from the date the cause of action arose. Three years period expired on 28<sup>th</sup> May, 2013 but the suit was filed four (4) months later without leave of the Court.
4. The Court has considered the submissions by the respondent and those by the claimant. The claimant submitted that upon termination he reported the dispute to the union and the parties attempted to settle the dispute in vain. That the dispute was reported to the Minister for Labour for reconciliation which process failed hence the suit.
5. The claimant argued further that he was not given a letter of termination but received a letter computing his retirement benefits on the said date.

**Determination**

7. It is not in dispute that the last day the claimant worked for the respondent was on 28<sup>th</sup> May, 2013. This fact is borne out of the claimant's statement of claim and documentation attached thereto.
8. The Court is guided by the Court of Appeal decision in **Rift Valley Railways (Kenya) Ltd -vs- Harun Wagonza Musonya and Another [2016] eKLR** where the Court of Appeal held:-

**“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 termination of the respondent's contract of service.”**

9. In the present case, the suit went stale on 28<sup>th</sup> May, 2016. This Court lacks jurisdiction to entertain the suit filed after three years mandatory limitation period.
10. The suit is accordingly struck out for want of jurisdiction.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 14TH DAY OF OCTOBER, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Gikera & Vadgama Advocates for the Respondent (Mr. Akwabi)

Francis K. Murage for the Union

Ekale – Court Assistant