



**REPUBLIC OF KENYA**

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

**CAUSE NO. 2420 OF 2017**

**TITUS WANYONYI WASWA.....1<sup>ST</sup> CLAIMANT**

**ORUCHO NYABANDO CLIFF.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**K.K. GROUP OF COMPANIES alias**

**KK LODGIT LTD.....RESPONDENT**

**RULING**

1. The Claimants brought this suit against the respondent on 7.12.2017 seeking

- (a) Costs of Kshs. 280000 for defending criminal case no. 228 OF 2014
- (b) Salary in lieu of notice
- (c) Compensation for unfair termination of their employment
- (d) Severance pay for years of service
- (e) General damages
- (f) Costs and interest.

2. The Claimant's case is that there employment was terminated by the respondent vide the letter dated 19.3.2014 but the effective date was backdated to 12.2.2014.

3. The Respondent objected to the suit by filing the Notice of Preliminary Objection dated 21.12.2017. The Preliminary Objection raises 4 grounds of which I have collapsed them into two, namely:

- (a) K.K. group of companies is not a legal entity capable of entering into any employment relationship with the claimant.
- (b) The suit is time bared under section 90 of the Employment Act.

4. The first ground is not capable of being disposed of without taking evidence and as such it does not fall within the four corners of a Preliminary Objection as envisaged by the celebrated decision in . **Mukisa Biscuit Manufacturing Co. Ltd. Vs Westend Distributors Ltd. [1969] EA 696**. It follows therefore that the only valid preliminary objection herein is the issue of limitation of time under section 90 of the said Act.

5. The parties agreed to dispose of the preliminary objection by written submissions on 24.10.2019. The Respondent filed on 6.11.2019 but as at 12.2.2020 the claimants had not filed their submissions.

6. After careful consideration of the claimant's pleadings and submissions by the respondent, there is no dispute that the claimants were dismissed from employment by the letter dated 19.3.2014 but the effective date was 25.2.2014. It is also common knowledge that the suit herein was filed on 7.12.2017. The issue for determination is whether the suit was filed out of time.

Section 90 of the Employment Act provides that:

***“Notwithstanding the provisions of section 4 (1) of the Limitation of Actions Act, no civil action or proceedings based on or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within 3 years after the act, neglect, or default complained or in the case of continuing injury or damage within 12 months next after cessation thereof.”***

7. In this case the claimants’ employment was terminated on 19.3.2014 when the termination was communicated. Three years from the said date lapsed on 19.3.2017 but the suit was filed on 7.12.2017 almost 9 months out of time. Accordingly, I agree with the respondent that the suit herein is time barred by dint of section 90 of the Employment Act and the court lacks jurisdiction to entertain it. Consequently, I uphold the preliminary objection by the respondent and strike out the entire suit by the claimants. Each party to bear own costs.

**Dated, signed and delivered in open court at Nairobi this 21st day of February, 2020.**

**ONESMUS N. MAKAU**

**JUDGE**