



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.646 OF 2014

KENNEDY MURIUKI NDWIGA.....CLAIMANT

VERSUS

KENYA CREDIT TRADERS LIMITED.....RESPONDENT

RULING

The claimant testified and closed his case on 19th November, 2019. On his evidence the court directed him to address the provisions of section 90 of the Employment Act, 2007 on the grounds that his last date at work was stated as 16th July, 2010 and his claim was filed on 16th December, 2014.

Both parties were given time (30 days) to prepare and address the court on the applicable law and section 90 of the Employment Act, 2007.

The claimant submitted that the claimant was dismissed from his employment on 16th July, 2010 and filed his claim in the year 2014 a period of over 3 years allowed by statute but parties had on-going negotiations between the union and the minister under the provisions of section 62 of the Labour Relations Act. A conciliator was appointed in the year 2013 and filed his report and certificate on 5th February, 2013 which recommended to the claimant to file suit which was done on 4th December, 2014.

The claimant submitted that time stopped running upon conciliation as held in the case of **Hawkins Wagunza Musonye versus Rift Valley Railways Limited, Misc. Civil Appl. No.11 of 2014**. In this case time stopped running in the year 2011 to 2013 and upon the issuance of certificate by the conciliator, time started running as held in **Kenya Plantation & Agricultural Workers Union versus Mununga Leaf Base [2013] eKLR** that accrual of time is suspended upon conciliation. Article 159 of the constitution allow for conciliation and alternative disputes resolution mechanisms and the claimant should not be penalised for engaging in negotiations as held in the case of **G4S Security Services (K) Limited versus Joseph Kamau & 468 others [2018] eKLR**. The claimant filed the claim within good time.

The respondents submitted that section 90 of the Employment Act is stated in mandatory terms. Time is not a mere technicality. The claimant filed the claim after 4 years. under the provisions of the Labour Relations Act, the claimant had 3 months to engage in negotiations. He was issued with certificate of conciliation on 5th February, 2013 and then took a whole year to file his claim. Parties cannot agree by consent to extend time. A party is at liberty to move the court where conciliation does not work within the time limitations as held in **Kenya Electrical Trades & Allied Workers Union versus Kenya Power & Lighting Company Limited, Misc Appl. No.3 of 2015**.

Both parties appreciate that employment terminated on 16th July, 2010 and the Memorandum of Claim was filed on 16th December, 2014, a period of over 3 years since the cause of action arose.

The claimant's case is that time stopped running after negotiations commenced and started to run again after the conciliator issued the certificate of conciliation advising the claimant to file suit.

In **G4S Security Services (K) Limited versus Joseph Kamau & 468 others [2018] eKLR**, cited above, the Court of appeal held that;

... we are satisfied that 464 respondents having conceded that their employment was terminated in the years 2008, 2009 and 2010 and filed their claim on 22nd January, 2014, that they filed their claims outside the limitation period of 3 years. The Employment and Labour Relations Court therefore erred in holding that it had jurisdiction to hear and determine claims that were filed outside the statutory limitation period.

The rationale was that;

Time does not stop running on the commencement of reconciliation or other alternative dispute resolution mechanisms provided for

under the Constitution or any other law. This is fortified by the decision of this court in the case of Rift Valley Railways (Kenya) Ltd V Hawkins Wagonza Musonye and another [2016] eKLR which held as follows:

“While there is no doubt that section 15 of the Employment and Industrial Relations Act encourages alternative dispute resolution, it must be court-based and conducted within the law. 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 the termination of the respondents’ contracts of service.”

Accordingly, the claimant having been terminated in his employment on 16th July, 2010 to file suit after the 15th July, 2013 was time barred under the provisions of section 90 of the Employment Act, 2007.

The court is denied jurisdiction to move further. Suit is hereby struck out.

Each party to bear own costs.

Delivered at Nakuru this 6th day of February, 2020.

M. MBARU

JUDGE

In the presence of:

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