



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 662 OF 2019

KENYA CHEMICAL WORKERS UNION CLAIMANT

v

RHOMBUS CONCRETE LTD RESPONDENT

**RULING**

1. The Kenya Chemical Workers Union (the Union) sued Rhombus Concrete Ltd (Respondent) on 8 October 2019 alleging unfair termination of employment of some 4 named persons. The Union pleaded that the terminations had been made on 4 August 2016.
2. Upon service, the Respondent filed a *Notice of Preliminary Objection* on 31 October 2019 contending
  1. THAT this claims made herein and filed on 8<sup>th</sup> October 2019 on behalf of George Mwangi Kariuki, John Maina Warigia, John Kitinga Kitheka and Gerald Kingori Gacheru are all incurably time-barred as they were brought more than 3 years after the arising of the respective causes of action which are all alleged as unfair terminations.
  2. From pleadings on record the alleged terminations of employment happened on 4<sup>th</sup> August 2016, 24<sup>th</sup> August 2016, 24 August 2016 and 18<sup>th</sup> August 2016 respectively.
  3. THAT the Claim herein offends the mandatory provisions in section 90 of the Employment Act, Cap. 226, Laws of Kenya.
  4. THAT the said Claim ought to be struck out forthwith with costs to the Respondent.
3. The Union filed its response to the Objection on 28 January 2020 and the Court took arguments on 10 February 2020.
4. Section 90 of the Employment Act, 2007 prescribes a limitation period of 3 years in disputes arising out of a contract of service.
5. All the Grievants were dismissed in August 2016 and should, therefore, have commenced legal action on or before end of August 2019. They did not.
6. The reason advanced by the Union for the failure was that there was a delay on the part of the first Conciliator appointed pursuant to the mandatory provisions of Part VIII of the Labour Relations Act, leading to the appointment of a second Conciliator.
7. It is true that the first Conciliator's appointment was recalled after an inordinate delay, and a new Conciliator appointed.
8. The new Conciliator released his report/recommendations on 10 September 2018. The report was received by the Union on 11 September 2018, well within the 3-years prescribed period (the Union had about 1-year to end of limitation period).
9. The Union did not explain why it had to wait until October 2019 to move the Court.
10. **The Court of Appeal had occasion to render itself on the question whether time stops running during conciliation in *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye and Ar* (2016) eKLR and it 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.*

11. The Court upholds the Preliminary Objection and strikes out the Cause. No order on costs.

**Dated, signed and delivered through email in Nairobi on this 24<sup>th</sup> day of April 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Union                      Mr. Gwako, Industrial Relations Officer

For Respondent              Mr. Nganga instructed by Wanyoike & Macharia Advocates

Court Assistant              Judy Maina