

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 255 OF 2018

1. GRACE WAMBUI WAHOME

2. JULIUS MAHINDU MWANGI.....CLAIMANTS

VERSUS

B.O.M DR. KAMUNDIA SECONDARY SCHOOL.....RESPONDENT

RULING

1. A preliminary objection was taken by the Respondent who had been sued for various reliefs by the 2 Claimants. The Respondent argues that the court therefore lacks the requisite jurisdiction to determine the matter before it. The Claimants are opposed and parties opted to argue the preliminary objection through submissions. The Respondent relied on the case of **Mukisa Biscuits Manufacturing Co. Ltd. v West End Distributors [1969] EA 696** and submitted that the objection was merited as the Claimants filed the suit outside the prescribed limit. It relied on the provisions of Section 90 of the Employment Act. The case of **Attorney General & Another v Andrew Maina Githinji & Another [2016] eKLR** where the Court of Appeal held that suits filed outside the limitation period cannot be upheld was relied on. The Respondent submitted that this position was reiterated in the Court of Appeal in the case of **G4S Security Services (K) Limited v Joseph Kamau & 488 Others [2018] eKLR**. The Respondent submitted that time does not stop running during conciliation or other alternative dispute resolution mechanisms. The case of **Rift Valley Railways (Kenya) Ltd v Hawkins Wagonza Musonye & Another [2016] eKLR** was cited for the foregoing proposition and the Respondent urged the Court to dismiss the claim that was time barred.

2. The Claimants admitted that the suit was filed out of time due to the dilatoriness of the Respondent in negotiations and conciliation. The Claimants submitted that the Respondent should not benefit from their own action which caused the matter to drag on by promising to pay but failing to do so. The Claimants thus submitted that they even tried alternative dispute resolution (ADR) meeting a State Counsel at the behest of the Principal of the Respondent in an attempt to finalize the matter through negotiation and settlement.

3. It is moot to reiterate the findings in **Mukisa Biscuit (supra)** or the provisions of Section 90. The law clearly stipulates that there is a time limit within which to file a claim for the relief the Claimants seek. They readily admit the suit was time barred and blame the Respondent for the delay. As held in the case of **Rift Valley Railways (Kenya) Ltd v Hawkins Wagonza Musonye & Another (supra)**, time did not stop running even when the matter went to conciliation or underwent the alternative dispute resolution mechanism involving the State Counsel. As the claim is time barred, it is stale and must of necessity be dismissed. There will be no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 23rd day of January 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the original

DEPUTY REGISTRAR