



**REPUBLIC OF KENYA**

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

**CAUSE NO. 2441 OF 2016**

**JOHN KAMAU WANGARI**

**ISAAC MACHARIA**

**PETER WACHIRA.....CLAIMANTS**

**VERSUS**

**NACICO CO-OPERATIVE SAVINGS &**

**CREDIT SOCIETY LTD.....RESPONDENT**

**RULING**

1. On 16 January 2017 the Respondent filed a Notice of Preliminary Objection in the following terms

1. The Claimants were summarily dismissed on 3<sup>rd</sup> May 2007. Any cause of action intended to be asserted herein is accordingly time barred by dint of the provisions of Section 90 of the Employment Act.

2. The Claimants right to sue for alleged unfair/or unlawful termination having lapsed, they lack capacity to agitate any cause against the Respondent. The Claim is therefore an abuse of the court process.

3. Further and without prejudice to the above, the third Claimant herein is deceased and no claim can be brought in his name. The Claim purportedly filed by/on behalf of the third Claimant should therefore be struck out.

4. The Court therefore has no jurisdiction to entertain this Claim and the same ought to be struck out with costs to the Respondent.

2. The Claimant filed grounds of opposition to the Objection on 3 December 2018 and the Court took arguments on 29 January 2019.

3. In paragraph 2.3 of the Statement of Claim, the Claimants pleaded that they were dismissed on 3 May 2007.

4. According to the Claimants, their Union, Banking, Insurance and Finance Union then reported a trade dispute to the Minister responsible for Labour. The Minister appointed an Investigator but the Investigator released his report only on 13 May 2014 after being compelled through Court action.

5. Upon release of the report, the Claimants instituted the instant proceedings alleging unfair/wrongful summary dismissal because they were not satisfied with the recommendations of the Investigator.

6. The Employment Act, 2007 commenced on 2 June 2008 and therefore it has no application to the cause of action presented by the Claimants. The Act does not suggest that it was meant to operate retrospectively.

7. At the time the dispute arose on 3 May 2007, the applicable statute was the Trade Disputes Act (repealed by the Labour Relations Act).

8. Under the said statutory framework, no party could move the Court directly. It was the responsibility of the Minister to refer disputes to the Court in cases where the parties did not agree.

9. The fifth schedule to the Labour Relations Act reserved the resolution of trade disputes (including summary dismissal prior to the commencement of the Act) to the provisions of the Trade Disputes Act (repealed).

10. Further, the said Act created a *sui generis* regime of dispute resolution not subject to the Limitation of Actions Act.

11. The Court is therefore unable to find that the cause(s) of action advanced by the Claimants are caught up by the limitation provision of the Employment Act, 2007.

**Isaac Macharia, deceased**

12. The Statement of Claim admits that Isaac Macharia is deceased. Date of decease was not indicated. Without and before taking out letters of administration, no suit could be instituted in his name or on his behalf and the Court will order that his name be struck out.

**Conclusion and Orders**

13. Save for striking out the name of Isaac Macharia, the Court finds and holds that the cause(s) of action presented are not subject to the limitation provision of the Employment Act, 2007.

14. The Notice of Preliminary Objection is thus dismissed with no order as costs.

**Delivered, dated and signed in Nairobi on this 15<sup>th</sup> day of February 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Banking, Insurance and Finance Union, Kenya

For Respondent                      Hamilton Harrison & Mathews, Advocates

Court Assistant                      Lindsey