

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 2122 OF 2014

SALOME CHEMEWNO.....CLAIMANT

- VERSUS -

NEW KENYA CO-OPERATIVE CREAMERIES LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya in Court on Friday, 6th April, 2018)

RULING

The claimant filed the memorandum of claim on 26.11.2014 through Kang'ahi S. & Company Advocates. The claimant prayed for judgment against the respondent for a sum of Kshs.306, 314.80 on the headings of pay in lieu of termination notice, pay during suspension, annual leave due and not taken, service pay, and compensation for unfair termination.

The respondent filed a response on 20.01.2015 through Kipkenda & Company Advocates. The respondent attached to the response a notice of preliminary objection that the suit was time barred under section 90 of the Employment Act because it was filed outside the 3 years of limitation as prescribed under that section. It was submitted that the claimant had not opposed the preliminary objection.

It was further submitted that in paragraph 3 of the memorandum of claim the claimant pleaded that she worked from 01.07.2008 to 15.10.2009 and in paragraph 9 that she was suspended on 15.10.2009 and dismissed on 22.01.2010. The cause of action having accrued on 22.10.2010, the suit ought to have been filed before or about 22.01.2013. Thus the suit was belatedly filed on 26.11.2014 after a statutory delay of about a year and 10 months.

The court upholds the submissions and the preliminary objection.

In conclusion the suit is hereby dismissed with costs as the preliminary objection is upheld accordingly.

Signed, dated and delivered in court at Nairobi this Friday, 6th day of April 2018

BYRAM ONGAYA

JUDGE