



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 806 OF 2017**

**(Before Hon. Justice Hellen S. Wasilwa on 11<sup>th</sup> June, 2018)**

**BAKERY, CONFECTIONERY,  
FOOD MANUFACTURING & ALLIED  
WORKERS' UNION (K).....CLAIMANT**

**VERSUS**

**WRIGLEY (EAST AFRICA) LIMITED.....1<sup>ST</sup> RESPONDENT  
SHEER LOGIC MANAGEMENT  
CONSULTANTS LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Application before Court is the 1<sup>st</sup> Respondent's Notice of Motion Preliminary Objection dated 24.1.2017 where the Respondents have averred that:-

- a) *The suit herein is an abuse of the Court process.*
- b) *The subject matter of the suit is res judicata.*
- c) *Without prejudice to the foregoing that the suit is statute barred.*

2. The Claimants herein filed this claim on 2/5/2017 alleging neglect/refusal/failure by the Respondent to adhere to and flagrant breach of Clause 2 of the recognition agreement, the preamble and Clauses 1 and 25 of the registered collective agreement.

3. The Claimants also seek for payment of damages and for compensation to the grievants by virtue of their unlawful termination of employment.

4. The Respondents have submitted that this claim is res judicata by virtue of Section 7 of Civil Procedure Act Chapter 21 laws of Kenya. The Respondents aver that this matter was determined in Cause 76 of 2008 where the parties were the same. That the issue in dispute as per the award was also similar to the current one.

5. The Respondents have also submitted that this claim is statute barred by virtue of Section 90 of Employment Act 2007. The Respondents point out that from the claim, the grievants are seeking compensation for breaches in respect of violation of Collective Bargaining Agreements covering 2007/2008, 2009/2010 and 2011/2012.

6. That the Respondents also claims at paragraph 38(b) of the claim the Claimant states that the grievants were terminated on or about 29<sup>th</sup> May 2012 and at paragraph (d) it add that the grievants are presenting the claim as a consequence of the Respondent's actions in unlawfully terminating their service without recourse to existing collective bargaining and the law.

7. This suit was filed on 2.5.2017. This was after 5 years after the alleged date of termination of services of the grievants which the Claimant has alleged was on 29<sup>th</sup> May 2012.

8. By virtue of this, I agree that indeed the events being complaint of having occurred in 2012, this claim is time barred by virtue of Section 90 of Employment Act. This Court lacks jurisdiction to entertain it. The same is therefore dismissed according.

9. I will issue no order as to costs.

**Dated and delivered in open Court this 11<sup>th</sup> day of June, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

**Amalemba for Claimant – Present**

**Weru holding brief for Obura for 1<sup>st</sup> Respondent – Present**