



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE 1308 OF 2017**

**KENYA NATIONAL PRIVATE SECURITY**

**WORKERS UNION.....CLAIMANT**

**VERSUS**

**THE WATCHDOG LIMITED.....RESPONDENT**

**RULING**

1. The respondent herein filed a preliminary objection on the point of law that the cause of action herein arose on 1<sup>st</sup> October, 2013 and the suit having been filed on after expiry of three years from the aforementioned date was barred by virtue of section 90 of the Employment Act.
2. The claimant herein contended that this claim was subject to conciliation as directed by the Minister, the Conciliators report containing recommendations was issued on 25<sup>th</sup> March, 2015 recommending that the management should pay the grievant redundancy dues as per the protective security wages order. According to the claimant time started to run only when the conciliator issued a certificate in terms of part VII of the Labour Relations Act since conciliation was mandatory before filing suit.
3. The claimant further submitted that on 7<sup>th</sup> September, 2015 he filed an application before the Chief Magistrates Court but was later advised to file the dispute before this court hence the time spent in the Chief Magistrates Court should not be counted towards the limitation period. It would seem that the claimant does not deny the possibility of the claim herein having been filed out of time only he is saying that certain periods should be excluded in reckoning time namely the time taken during conciliation process and the period he erroneously filed the dispute before the Chief Magistrate's Court.
4. It is true that once a dispute is submitted for conciliation by the Minister and a Conciliator appointed, the pace and conclusion of the conciliation process is beyond the control of the claimant and it would be unfair to include the period spent during conciliation in reckoning limitation. The Conciliator issued his report on 25<sup>th</sup> March, 2015. Three years ought to have lapsed on 25<sup>th</sup> March, 2018. This claim was filed on 17<sup>th</sup> July, 2017 in the circumstance within the limitation period.
5. The preliminary objection is therefore found without merit and is hereby dismissed with costs.
6. It is ordered.

**Dated at Nairobi this 28<sup>th</sup> day of September, 2018**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 28<sup>th</sup> day of September, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.