

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CAUSE NO. 19 OF 2017

(Formerly Nyeri ELRC 501 of 2017)

FREDRICK MWITI.....CLAIMANT

VERSUS

CHAIRMAN AND MANAGEMENT COMMITTEE MERU

CENTRAL DAIRY CO-OPERATIVE UNION LIMITED.....RESPONDENT

RULING

1. The Respondent's preliminary objection dated 27th June 2018 is what is due for determination. The notice of preliminary objection is to the effect that the claim herein is time barred the cause of action being alleged to have accrued in May 2014 and that time for filing the current suit would have lapsed in May 2017.

2. The preliminary objection was urged on 1st October 2018 by Mr. Mwarania for the Respondent in the absence of the Claimant duly served and a ruling reserved to today. Mr. Mwarania urged the court to dismiss the suit as limitation applied. He stated that as can be seen from the body of the claim and verifying affidavit, the cause of action arose on 1st April 2014 and that from that date 3 years elapsed on 1st April 2017 and the claim herein was not filed until 20th November 2017 which was 6 months late. He submitted that to this extent the suit ought to be struck out with costs as the suit is time barred and incompetent in terms of Section 90 of the Employment Act which sets limitation at 3 years.

3. The claim was filed on 20th November 2017. From the pleadings filed by the Claimant and his verifying affidavit sworn on 20th November 2017, he asserts that the cause of action accrued on 1st April 2014. Section 90 of the Employment Act provides as follows:-

90. Notwithstanding the provisions of section 4 (1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

4. The suit was limited in time and in view of the express provisions of the law, there can be no life breathed into it as it was dead on arrival at this Court's Registry on 20th November 2017. The suit having expired on 1st April 2014 is therefore struck out with costs to the Respondent.

It is so ordered.

Dated and delivered at Meru this 6th day of November 2018

Nzioki wa Makau

JUDGE