



**REPUBLIC OF KENYA**

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

**CAUSE NO 2003 OF 2014**

**KENYA UNION OF COMMERCIAL FOOD**

**AND ALLIED WORKERS.....CLAIMANT**

**VERSUS**

**ANCHOR EAST AFRICA LIMITED.....RESPONDENT**

**RULING**

1. This ruling responds to a preliminary objection raised by the Respondent in its Memorandum of Response dated 26<sup>th</sup> February 2015 and filed in Court on 27<sup>th</sup> February 2015. The substance of the objection is that the Claimant's claim is statute barred by dint of Section 90 of the Employment Act, 2007.

2. When the parties appeared before me on 21<sup>st</sup> September 2016, they agreed to dispense with the objection by way of written submissions. However, only the Respondent complied.

3. In its submissions filed on 29<sup>th</sup> September 2016, the Respondent referred to *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] E.A 696* where in defining what constitutes a preliminary objection, the Court stated thus:

***“a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.***

***Examples are an objection to the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”***

4. The Respondent submits that the cause of action herein accrued in 2009 and that the claim filed in 2014 is therefore time barred.

5. The Respondent's objection is hinged on Section 90 of the Employment Act which states 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.***

6. As held in *Thuranira Karauri v Agnes Ncheche [1997] eKLR* limitation of actions is a matter of jurisdiction.

7. Moreover, jurisprudence emerging from this Court is to the effect that it has no jurisdiction to extend time for filing of claims falling under the Employment Act, 2007 (see *Maria Machocho v Total Kenya Limited [2013] eKLR* and *George Hiram Ndirangu v Equity Bank [2015] eKLR*.)

8. According to the Claimant's Memorandum of Claim dated 14<sup>th</sup> October 2014 and filed in Court on 11<sup>th</sup> November 2014, the cause of action forming the substance of the claim arose in 2009. The dispute was referred to conciliation and the Conciliator issued a certificate of an unresolved dispute on 15<sup>th</sup> February 2010.

9. In line with the decisions in *Kenya Plantation & Agricultural Workers Union v Mununga Leaf Base [2013] eKLR* and *Pauline Waithira Muraguri v Murang'a Farmers Co-Operative Union Ltd [2014] eKLR* time began to run on 15<sup>th</sup> February 2010 when the conciliation process came to an end. That being the case, the claim ought to have been filed not later than 14<sup>th</sup> February 2013.

10. The claim filed on 11<sup>th</sup> November 2014 is therefore way out of time and as I have already stated, the Court has no jurisdiction to extend time. Consequently the claim is struck out with no order for costs.

11. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Owiyo (Union Representative) for the Claimant

Mr. Koceyo for the Respondent