



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT KISUMU**

**CAUSE NO. 281 OF 2016**

***(Before Hon. Lady Justice Maureen Onyango)***

**KENYA SCIENTIFIC RESEARCH**

**INTERNATIONAL TECHNICAL &**

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

**-Versus-**

**KENYA AGRICULTURAL & LIVESTOCK RESEARCH**

**ORGANIZATION (SUGAR RESEARCH INSTITUTE).....RESPONDENT**

**RULING**

The Respondent herein filed a notice of preliminary objection dated 27th October, 2017 seeking the striking out and/or dismissal of the Claimants entire claim dated 19th September, 2016 on grounds that -

- 1) **THAT** the suit is barred by the doctrine of limitation of actions.
- 2) **THAT** the Claimant has instituted this suit contrary to section 90 of the Employment Act 2007.

The application was argued on 3rd November 2016. Mr. Walusala instructed by Millimo Muthomi & Co. Advocates appeared for the Respondent while Mr. Martin Oduor, Secretary General of the Claimant union represented the Claimant.

Mr. Walusala submitted that the pleadings filed by the Claimant shows that the cause of action arose on 23rd March 2013 and that 3 years elapsed on 23rd March, 2016. He submitted that section 90 of the Employment Act is very clear that an employment matter must not be filed more than 3 years after the cause of action arose. He submitted that the only exception is if there is continued injury which is not the case in the instant claim.

He submitted that parties are bound by their pleadings, that the suit is statute barred and the same should be struck out except the case of the 2nd and 3rd Claimants who were terminated on 14th March 2014.

For the claimant Mr. Oduor submitted that under section 62 of the Labour Relations Act a formal trade dispute is referred to the Minister before 3 years. He submitted that the dispute herein was referred to the Minister under section 62(3)(b) which states that the Minister may extend the period for reporting of a dispute. He submitted that following the reporting of the dispute by the claimant the Minister accepted the dispute and a conciliator was appointed. That on 26th March, 2015 after parties appeared before the

conciliator the Respondent released part payment of the sums claimed by the Claimant. He therefore submitted that the issue of limitation was overtaken by events. He submitted that following the part payment the union wrote to the Respondent seeking payment of other dues that were not settled. These included overtime, notice and other benefits. He submitted that the claim arose out of a redundancy.

Mr. Oduor submitted that following his demand, the Respondent replied that they will rely on the advice of the Labour Officer. He submitted that he wrote to the Labour Officer on 14th September, 2015 to release the certificate of disagreement to enable the claimant file suit but the conciliator did not respond. That after pursuing the conciliator and realising she was not going to issue the certificate, the claimant filed this dispute. He submitted that he could not come to court before the conclusion of conciliation.

Mr. Oduor submitted that the preliminary objection has no merit and should be dismissed.

### **Determination**

I have considered the pleadings and the submissions of the parties.

It is not in dispute that the Grievants herein on whose behalf the claimant has filed the present dispute were declared redundant by the Respondent on 31st March, 2013. The Claimant thereafter reported a dispute to the Minister for Labour pursuant to the provisions of section 62 of the Labour Relations Act. Following conciliation the Respondent paid a sum of Shs.3,115,324.55 on account of severance pay and pro-rata leave which the claimant acknowledged by letter dated 18th May, 2015. The Claimant however pointed out in the same letter that no payment had been made in respect of notice and other claims including overtime worked during public holidays.

The claim herein is for notice, leave, overtime, underpayments, compensation for loss of employment and house allowance.

The Respondent does not deny that it made part payment to the Grievants in 2015.

Under section 23, 24 and 25 of the Limitation of Actions Act, acknowledgement and part payment has the effect of reviving and/or shifting the date of accrual of cause of action to the date of acknowledgement and/or part payment.

The foregoing being the case, the cause of action herein arose in 2015 upon acknowledgement and part payment of the terminal benefits of the Grievants, the balance of which is the subject of this suit. The claim is therefore not time barred.

The preliminary objection is thus without merit and I dismiss the same with no orders for costs.

**Dated and signed and delivered this 23rd day of February, 2017**

**MAUREEN ONYANGO**

**JUDGE**