



**REPUBLIC OF KENYA**

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

**CAUSE NO 1334 OF 2013**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT**

**VERSUS**

**NAIROBI WATER AND SEWERAGE COMPANY LIMITED.....RESPONDENT**

**RULING**

1. This ruling relates to a preliminary objection raised by the Respondent in paragraph 6 of its response dated 9<sup>th</sup> May 2014 and filed in Court on 13<sup>th</sup> May 2014. The substance of the objection is that the Claimant's claim is statute barred since the cause of action arose at least 7 years before filing of the claim on 20<sup>th</sup> August 2013.

2. By consent of the parties, the objection was urged by way of written submissions. In the submissions filed on behalf of the Respondent on 20<sup>th</sup> April 2016, it is submitted that the claim offends the provisions of Section 4(1) of the Limitation of Actions Act and Section 90 of the Employment Act, 2007.

3. Counsel for the Respondent referred the Court to the decision in *Thuranira Karauri v Agnes Ncheche [1997] eKLR* where it was held that limitation is a matter of jurisdiction of the Court to entertain the claim before it.

4. In response, the Claimant submits that the dispute forming the subject matter of this claim was first subjected to the internal appeal mechanism provided by the Respondent and was then referred to conciliation in November 2012. The Conciliator finally issued a certificate of non-resolution of the dispute on 24<sup>th</sup> April 2013.

5. In submitting that time did not begin to run until the issuance of the aforesaid certificate, Counsel for the Claimant relied on 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* where it was held that once a party invokes the dispute resolution mechanism set out under the Labour Relations Act, time stops to run until the final outcome of the conciliation process.

6. I agree that a cause of action arising from a dispute that has been referred to conciliation does not accrue until either the parties formally withdraw from conciliation or the Conciliator issues a final word. In the case now before me, the Conciliator issued a certificate of non-resolution of the dispute on 24<sup>th</sup> April 2013. The Court therefore finds that the claim having been filed in the same year was well within time.

7. The preliminary objection therefore fails and is overruled with costs in the cause.

8. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI**

**THIS 10<sup>TH</sup> DAY OF FEBRUARY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr.Otieno for the Claimant

Mr. Omuganda for the Respondent