



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 262 OF 2013

SAMSON ARAP BII.....1ST CLAIMANT
CHARLES K. CHEPKWONY.....2ND CLAIMANT
SIMON MALEI.....3RD CLAIMANT
PAUL BII.....4TH CLAIMANT
DAVID KETER.....5TH CLAIMANT
GRACE CHEPKEMOI.....6TH CLAIMANT
ANN CHEPKOECH.....7TH CLAIMANT
HELLEN CHEPKORIR.....8TH CLAIMANT
ALICE CHELANGAT.....9TH CLAIMANT
JANE CHEPCHIRCHIR.....10TH CLAIMANT

v

BENARD KIPLANGAT KILELE t/a NORTH NJORO FARM.....1ST RESPONDENT
RONALD KIPNGETICH KILELE.....2ND RESPONDENT
ANNE MAANYU KILELE.....3RD RESPONDENT

RULING NO. 3

1. There has been a reluctance by the parties to have this Cause heard and determined expeditiously. It has been a case of application after application (see Ruling No. 2) and non-compliance with court directives.
2. Therefore in its Ruling No. 2 delivered on 14 October 2016, the Court gave directions as to the filing of process to facilitate the hearing and conclusion of the Cause.
3. In compliance with the directions, the parties *Agreed Issues* in dispute and the same were filed on 8

November 2016.

4. When the Cause was mentioned on 25 November 2016, the Court scheduled hearing for 24 January 2017 (the Court was not informed that one of the Respondent had filed a Notice of Preliminary Objection, while a Preliminary Objection by the 1st and 2nd Respondents filed on 18 November 2015 was left unprosecuted).

5. When the Cause was called out for hearing on 24 January 2017, Mr. Karanja holding brief for Ms. Wambugu informed the Court that there was a Preliminary Objection which ought to be addressed first (Instead of including the question of limitation as part of the *Agreed Issues*, the 3rd Respondent filed a Notice of Preliminary Objection to the effect that the entire claim was status barred (an Amended Notice of Preliminary Objection was filed on 11 November 2016 to substitute the word status with statute).

6. Because the objection went to jurisdiction, the Court directed that it be argued first.

7. In taking the objection, Mr. Karanja submitted that the cause of action as pleaded in paragraphs 4, 5, 6, 7, 8 and 9 of the Amended Memorandum of Claim and the substance thereof were contractual in that the Claimants were seeking dues arising from an employment relationship for the period 1999 to 2003.

8. According to Mr. Karanja, the dues demanded being for the period up to 2003, the action should have either been commenced around 2006, in case section 90 of the Employment Act, 2007 applied, or by 2008 in case the Limitation of Actions Act applied.

9. And on the plea in paragraph 4 of the Amended Memorandum of Claim that some dues were paid in 2008, Mr. Karanja contended that those dues related to the period up to 1998, and if at all the payment amounted to part acknowledgment in terms of section 23(3) of the Limitation of Actions Act, the Claimants had up to 2011 to commence action.

10. However, Mr. Karanja urged that the payments in 2008 did not constitute part of the action herein.

11. In a brief response, Ms. Kerubo for the Claimants asserted that the preliminary objection was fatally defective because it did not give particulars and/or details of the objection.

12. Counsel also submitted that the Claimants had been ambushed by the objection, and rounded off by contending that Mr. Karanja was advancing certain interests because he had acted for a proposed *Interested Party* whom the Court had declined to admit into the proceedings.

13. Counsel went as far as demanding that Mr. Karanja table instructions to hold brief for Ms. Wambugu for the 3rd Respondent.

Ambush

14. The preliminary objection was filed in Court initially on 8 November 2016 and an amended version correcting a typographical error was filed on 11 November 2016.

15. The Claimants did not deny that the preliminary objection was served upon them. The date of service was however not disclosed.

16. In the court's view, the Claimants cannot claim that they were ambushed when they failed to disclose when the objection was served on them. The 2 or so months from filing of the objection was adequate time for them to prepare for the objection and also to file any grounds of opposition, which was not done.

Objection Fatally defective

17. The objection raised by the 3rd Respondent related to issue of limitation and in my view that was

