

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 143 OF 2015

KENYA COUNTY WORKERS' UNION.....CLAIMANT

VERSUS

COUNTY PUBLIC SERVICE BOARD OF EMBU COUNTY.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 14th July, 2017)

RULING

The claimant filed the memorandum of claim on 01.09.2015 alleging the wrongful dismissal of its member one Namu S.P. Njiru and refusal by respondent to convene a joint staff committee meeting and to attend a conciliation meeting which was scheduled prior to institution of the suit.

The respondent filed a preliminary objection on 11.03.2016 through R.M. Mugo & Company Advocates. The grounds of objection were as follows:

- a. The claim or the suit is statutory barred as it was instituted outside the 3 years of limitation per section 90 of the Employment Act, 2007.
- b. The suit was statute barred as it was filed after lapsing of the 6 years of limitation under section 4 of the Limitation of Actions Act.
- c. The suit is statute barred as the claimant did not satisfy the mandatory requirements of section 62(3) (a) or (b) of the Labour Relations Act, 2007.
- d. The suit does not lie in law or otherwise and is a non-starter, bad in law, fatal and incurably defective.

It is not disputed that the grievant was dismissed on 16.04.1999 and suit filed on 01.09.2015. Accordingly, it was submitted for the respondent that the suit was time barred as the 3 years of limitation period under section 90 of Employment Act, 2007 had lapsed on or about 16. 04.2002. Further the 6 years of limitation of action under section 4 of the Limitation of Actions Act had lapsed about 16.04.2005. Thus the suit was statute barred.

The claimant submitted that the parties had engaged in conciliation proceedings under the relevant statutory provisions and therefore, the suit ought to be allowed because Article 159 (2) and (3) of the Constitution promotes alternative dispute resolution methods.

The court has considered the submissions made and returns that as submitted for the respondent, the conciliation proceedings did not adjourn or suspend the running of the time of limitation. Accordingly the suit is liable to dismissal and in promotion of good industrial relations between the parties, each party shall bear own costs of the suit.

In conclusion, the claimant's suit is hereby dismissed with orders that each party shall bear own costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 14th July, 2017**.

BYRAM ONGAYA

JUDGE