



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 4 OF 2014**

***(Before D. K. N. Marete)***

**JOEL KIBET ROTICH.....CLAIMANT**

**VERSUS**

**KENYA POWER & LIGHTING COMPANY LTD .....1ST RESPONDENT**

**THE TRUSTEES**

**THE RETIREMENT BENEFITS SCHEME.....2ND RESPONDENT**

**RULING**

This is a preliminary objection tabulated at paragraph 13 of 2nd Respondent's Statement of Response dated 9th February, 2017 as follows;

*In response to the averments contained in paragraphs 7, 8 and 9 of the Claim the 2<sup>nd</sup> Respondent avers that the suit herein is not only frivolous but is time barred and should be struck out. Notice is hereby given that the 2<sup>nd</sup> Respondent shall at the earliest opportune moment raise a preliminary objection on this point of law to have the suit struck out.*

The matter came to court on 23rd February, 2017 when the parties agreed on filing their written submissions on the preliminary objection as set out above. On record we now have submissions from the Claimant/Respondent dated 20th September, 2017 and no reciprocating ones from the respondents. The preliminary objection therefore remains unsupported.

The claimant in his written submissions contends that the issue in dispute relates to his retirement benefits resultant from the Staff Retirement Benefits Scheme, a staff provident fund and insurance scheme. The time by issue would not in the circumstances arise as the claimant opted for early retirement and therefore a time bar would not be applicable in the circumstances. At the time of retirement his benefits were deferred as he had not attained 55 years.

This appears to be a claim outside the terms of employment. It would seem that it falls into the category of matters "relating to employment and labour relations..." per the opener in section 12 of the Employment and Labour Relations Act, No. 20 of 2011 as follows;

*The court shall exercise original and appellate jurisdiction to hear and determine all disputes*

*referred to it in accordance with Article 162(2) of the Constitution and the provisions of the Act or any other written law which extends jurisdiction to the Court **relating to employment and labour relations** including –*

*a. ....*

The owner of the preliminary objection does not in any way back it. No attempt was made in prosecuting the preliminary objection or at all.

The preliminary objection falls short of the sensibilities of a preliminary objection. It wades off the criterion for such attempts at litigation. It is a non starter *in toto* and must therefore be treated as such.

I am therefore inclined to dismiss the preliminary objection with costs to the Claimant/Respondent.

Delivered, dated and signed this 29th day of September 2017.

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Motanya instructed by Motanya & Company Advocates for the Claimant/Respondent.
2. Mr. Muga for the 1st Respondent instructed by Muga & Muga Associates.
3. Mr. Wachira instructed by Kipkenda & Company Advocates for the 2nd Respondent.