



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 151 OF 2017
DOCK WORKERS UNION [K].....CLAIMANT
VERSUS
KENYA PORTS AUTHORITY.....RESPONDENT
RULING

INTRODUCTION

1. The respondent has filed a Notice of Preliminary Objection to the suit on grounds that:
 - (a) The claimant lacks *locus standi*
 - (b) There is no cause of action against respondent.
 - (c) The suit is time barred under Section 90 of the Employment Act.

The suit was disposed of by written submissions only the issue of *locus standi* and time bar.

RESPONDENT'S SUBMISSIONS

2. The respondent submitted that the claimant lacks *locus standi* to institute this suit. She relied on Law Society of Kenya VS Commissioner of Lands [2000] KLR Pg 706 where the High court held that a party must have sufficiently of interest to sustain in its standing to sue in a court. The respondent then urged that for the claimant to have *locus standi* herein, she must demonstrate the *nexus* between the claim and herself and especially show she has been prejudiced or about to be prejudiced. In the alternative, she contended that the claimant must demonstrate where she derives the authority to lodge a claim on behalf of the grievant.
3. In addition the respondent has submitted that the suit has been brought after an inordinate delay. In that respect she had urged that this court lacks jurisdiction to entertain the suit on account of the time bar under Section 90 of the Act. She observed that by dint of paragraph 5 and 6 of the Memorandum of Claim the alleged cause of action arose in 2003 and 2009 when 247 of temporary employees' contracts expired and were not renewed due to a restructuring process, more than 3 years limitation period allowed by Section 90 of the Act. She submitted that there is a plethora of court decisions to the effect that Limitation period for causes of action founded on contract cannot be extended. She prayed that this suit be dismissed with costs.

CLAIMANTS SUBMISSIONS.

4. The claimant has opposed the objection by the defence and submitted that she has *locus standi* to sue because she has wide mandate including agitating for her members and non members terms and conditions of services. She further submitted that she had engaged the respondent for over six years in this dispute and even signed agreements and as such she can authoritatively represent the claimants herein.

5. On time bar, she has admitted that the cause of action arose more than 3 years before filing this suit. However she denied that the suit is time barred because no termination letters were given to the claimants.

ANALYSIS AND DETERMINATION

6. There is no dispute that the grievant were employed on seasonal terms upto the year 2003 when their contracts expired and they were not renewed due to the restructuring. There is also no dispute that they lodged disputes before the labour minister but after restructuring the grievants were never reinstated and they brought this suit on 22/2/2017 through the claimant. The issues for determination are:

(a) Whether the suit is time barred;

(b) Whether the claimants lacks *locus standi* to bring this suit on behalf of the grievants.

Time Bar

7. The claimant has admitted that the termination of the grievants contracts occurred in 2003. The suit however was filed on 22/2/2017 that was over 14 years after the time when the cause of action herein arose. They were now seeking injunction to bar the respondent from employing other people before reemploying the 247 grievants and further for order that they be paid their terminal dues for the period when they worked as casual employees. That is too late in the day and I agree with the defence that the suit is time barred under Section 90 of the Act this court lacks jurisdiction to determine the same. I therefore strike out the suit on that ground.

Locus standi

8. In view of the foregoing finding that the suit is time barred, I will not waste time determining this issue.

DISPOSITION

9. For the reason that the suit is time barred, the court lack jurisdiction to determine it and I therefore strike it with costs.

Dated, signed and delivered this 13th October 2017

O. N. Makau

Judge