

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 181 OF 2015

KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT

VERSUS

MURANG'A COUNTY PUBLIC SERVICE BOARD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday, 14th April, 2016)

RULING

The claimant union filed the memorandum of claim on 08.10.2015 on behalf of its member one Joseph Kairu.

On 30.10.2015 the respondent filed a notice of preliminary objection through Kimwere Josphat & Company Advocates.

The first ground of objection is that the suit is time barred under section 90 of the Employment Act, 2007. It is the respondent's case that the claimant was dismissed on 14.04.1999 and therefore time lapsed on 14.04.2002. The respondent's further case is that even under section 4 of the Limitation of Actions Act, Cap.22, 6 years of limitation for a suit based on contract like the present one lapsed on 14.04.2005 so that under that prevailing law, the suit is equally time barred.

The claimant has pleaded that he was dismissed on 14.04.1999 and reinstated back in employment on 27.07.2011 by his employer, the County Council of Murang'a. The claimant was deployed as reinstated and demanded to be paid the withheld salaries and allowances. He was not paid and conciliation proceedings did not resolve the matter.

On 21.01.2015 the Ministry of Devolution and Planning wrote conveying the decision by the Public Service Commission that for payment of dues following the claimant's reinstatement, the Commission decided that the period of 11 years the claimant was out of the service on dismissal be treated as leave without pay. The conciliator issued a certificate of unresolved dispute dated 26.03.2015. In view of the certificate or the letter conveying the decision by the Commission, the court returns that the claimant's cause of action is not time barred. In the court's opinion, the claimant's cause of action is validly founded upon the letter conveying the decision of the Commission. It is that letter by the Commission that exhausted the administrative procedures in resolving the dispute and up to the date of that letter, the cause of action cannot be said to have accrued.

In conclusion the court returns that the preliminary objection is unfounded as the suit discloses a clear cause of action and is not time barred. The preliminary objection fails with orders that the respondent will pay the claimant's costs of opposing the objection and parties are invited to take directions on further steps in the suit.

Signed, dated and delivered in court at Nyeri this Thursday, 14th April, 2016.

BYRAM ONGAYA

JUDGE

