



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 486 OF 2015**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT**

**VERSUS**

**KIAMBU COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The respondent herein raised a preliminary objection to the effect

that:-

- a. That the suit herein was time barred by virtue of section 90 of the Employment Act, Cap 226 Laws of Kenya and section 4 (1) (a) of the Limitation of Actions Act, Cap 22 Laws of Kenya.
- b. That at the time the cause of action arose, the respective officers of the Respondents were non-existent: they only came into effect pursuant to the County Governments Act No. 17 of 2012 which came into effect on 24<sup>th</sup> July 2014.
- c. That the Respondents herein had been wrongly joined as parties to the suit, since the claimants were former Kiambu County Council employees and their terms of service or otherwise fell under the auspices of the Public Service Commission.
- d. That the remedies sought by the claimant are not remedies envisaged under section 138 of the County Governments Act on redeployment of public servants from the National Government to the County Government.
- e. That the claim was thus incurably defective, incompetent, void ab initio, untenable and an abuse of the Court process and the same ought to be dismissed with costs to the Respondents.

2. Of these objections, the one that goes to the root of the claim and which affects the jurisdiction of the Court is ground number one on the issue of limitation.

3. Courts do not have jurisdiction to entertain stale claims especially where the law is clear as it is with respect to claims founded on contract of employment that the same must be brought to the Court within 3 years. Section 90 of the Employment Act makes no provision for extension of time.

3. This Court has however previously ruled in the case of **Kenya Plantation & Agricultural Workers Union v. Mununga Leaf Base (2013) eKLR** that resolution of labour and employment disputes is a process with the Court in most cases, is the final arbiter when other pre-court mechanisms have failed. What this meant is that once a disputant invokes the prescribed dispute resolution mechanisms, the accrued cause of action becomes suspended until the outcome of the conciliation process is known.

4. The failure of the conciliation process is usually known when the conciliator issues his certificate referring the dispute to the Court in accordance with section 69 of the Labour Relations Act.

5. The Court has reviewed and considered the pleadings by both the claimant and the respondent and it emerges that the dispute herein has been subjected to conciliation process. It was submitted to the Kiambu District labour Office by the Union on 13<sup>th</sup> June, 2007. The Minister acknowledged the dispute on 15<sup>th</sup> July, 2008 and invited the respondent for a meeting on 22<sup>nd</sup> July, 2008 at Kiambu Labour Office. By a letter dated 27<sup>th</sup> August, 2007, the District Labour Officer called conciliation meeting on 11<sup>th</sup> September, 2007. It would seem nothing much yielded from these meetings hence the claimant issued a notice of a Trade Dispute under section 62 of the Labour Relations Act to the Minister for Labour.

6. The Minister accepted the dispute and appointed a Mr. B. O. Musandu of Kiambu Labour Office as conciliator by a letter dated 28<sup>th</sup> June, 2013. The matter remained unresolved prompting the conciliator to issue a certificate of unresolved dispute on 18<sup>th</sup> March, 2014. These events have in one way or another been captured in the pleadings by the claimant and the respondent.

7. From the foregoing the cause of action entitling the claimant to file this suit accrued on 18<sup>th</sup> March, 2014 when the conciliator issued a certificate of unresolved dispute. The claim herein was filed on 26<sup>th</sup> March 2016. Almost one year after the issuance of the certificate by the conciliator. It therefore cannot be said to have been filed out of time offending section 90 of the Employment Act.

8. In the circumstances the objection is overruled and the suit shall proceed to trial on merit.

9. It is so ordered.

Dated at Nairobi this 17<sup>th</sup> day of June 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 17<sup>th</sup> day of June 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**