

REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.79 OF 2016

(BEFORE D. K. N. MARETE)

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS (KUDHEIHA).....CLAIMANT**

VERSUS

THE B.O.M OF ST. JOHN METEMBE SEC. SCHOOL.....RESPONDENT

RULING

The matter for determination is the respondent's preliminary objection dated 20th June, 2016, which reads as follows;

TAKE NOTICE that the respondents will be raising a preliminary objection based on a point of law in that the claim herein being based on a contract of employment has been overtaken by event. The claim being instituted more than six years after the cause, of action took place see the statute of Limitations of Actions Act Section 4(1) (4).

The matter came for hearing on 21st July, 2016 and was heard. The Claimant also filed the claimants Response to Notice of Preliminary Objection on 14th July, 2016.

At the hearing, Mr. Begi, counsel for the respondent opened by a submission that this suit is brought to court in contravention of S. 4(1) (4) of the Limitation of Actions Act, Chapter 22 of the Laws of Kenya. This is because the Memorandum of Claim at paragraph 2.1.8 avers that the claimant was dismissed in October, 2009 - Annexure JM 9 is a dismissal letter. This is a period of more than six (6) years and therefore out of the limitation period for actions in contract. The matter was filed on 13th April, 2016. This court therefore lacks jurisdiction to hear the matter and again cannot in itself extend time as this is strictly a contractual cause.

Mr. Okwach for the claimant union submitted and relied on Article 159 of the Constitution of Kenya, 2010 and stated that this is a technicality and should be disallowed. I disagree. It is his further submission that the mechanisms of dispute resolution in labour and employment matters is provided for under the Labour Relations Act, 2007 and this provides that time starts running after exhaustion of the mechanism for dispute resolution under the Act. In the circumstances of this case, a certificate of disagreement was issued on 15th November, 2012 and therefore limitation can only have ran from this point of time.

I agree with the claimant/respondent. Mr. Gondoso, the conciliator, drew and dispatched a letter of certificate of disagreement dated 15th November, 2012 at some undisclosed date and time. Limitation of action's time therefore started running from this date and particularly from any date after the claimant and the parties were informed of the decision of the conciliator. The preliminary objection must therefore fail on this ground.

I am therefore inclined to dismiss the preliminary objection with an order that each party bears its costs of the preliminary objection.

Delivered, dated and signed this 14th day of November 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Aboki Begi instructed by Aboki Begi & Company Advocates for the Respondent/Applicant.
2. Mr. Joseph Okwach for the Union