

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 150 OF 2016

KUDHEIHA WORKERS.....CLAIMANT

VERSUS

B.O.M MAHIGA GIRLS HIGH SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 4th November, 2016)

RULING

The claimant filed the memorandum of claim on 29.06.2016 alleging none payment of terminal benefits for its member one Mary Wanjiku Wagogi, the grievant. The claimant prayed for payment of terminal dues per the collective agreement including 3 months in lieu of the termination notice Kshs. 24, 000.00; service gratuity for 12 years Kshs. 96,000.00; salary for 5 months while on suspension Kshs. 40, 000.00; underpayment of wages from January 2010 to December 2012 Kshs.27, 330; six months compensation for loss of employment Kshs. 48, 000.00 and total **Kshs. 235, 330.00**.

The respondent filed the memorandum of response on 29.07.2013 through F.O. Makori, Litigation Counsel, for Attorney General. The respondent prayed that the suit be dismissed with costs. At paragraph 22 of the response the respondent pleaded that the suit was time barred under section 90 of the Employment Act, 2007. The respondent filed a preliminary objection on 29 07.2016 that the suit was time barred under section 90 of the Employment Act, 2007; the suit contravened section 62(3) and 65(1) (b) of the Labour Relations Act, 2007; the court lacked jurisdiction in such circumstances; and the claimant's suit be dismissed with costs. The claimant filed a reply to the preliminary objection on 26.09.2016.

The respondent's submission in urging the preliminary objection is that the grievant was dismissed on 29.01.2013. Thus under section 90 of the Employment Act, 2007 the memorandum of claim ought to have been filed on or before 29.01.2016 before lapsing of 3 years of the period of limitation. Instead the claim was filed belatedly on 29.06.2016. Under section 62 (3) of the Labour Relations Act, 2007 the trade dispute was to be reported within 90 days of dismissal (being on or about 29.04.2013) but the claimant reported the dispute belatedly and without explanation or the Minister's leave on 02.04.2014. Under section 65(1) of the Labour Relations Act, 2007 the Minister was to appoint a conciliator within 21 days from the date the trade dispute was reported (being on or about 23.04.2014) but the conciliator was appointed belatedly on 25.11.2014.

The court has considered the respondent's submissions. The submissions are found valid and well founded. The court upholds the submissions and finds that the conciliatory proceedings were outside the statutory time lines and therefore null and void. Further, the suit was filed outside the statutory time of limitation under section 90 of the Employment Act, 2007 and the void statutory conciliatory proceedings could not help to adjourn the prescribed period of limitation. While making this finding, the court considers that if the time lines for the statutory conciliation are complied with, the parties should be able to know the outcome of such proceedings well before the lapsing of the time of limitation under section 90 of the Employment Act, 2007. Parties to a statutory conciliation proceeding must be vigilant so that in event of lateness in any of the steps a party is at liberty to move the court promptly so that the suit is not rendered time barred. In view of the emerging issues of law in the present case, each party shall bear own costs of the suit.

In conclusion, the preliminary objection filed on 29.07.2016 is hereby upheld as the suit is time barred under section 90 of the Employment Act, 2007 and is hereby dismissed with orders that each party to bear

own costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 4th November, 2016.**

BYRAM ONGAYA

JUDGE