



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
CAUSE NO. 1293 OF 2014
KUDHEIHA WORKERS CLAIMANT
VERSUS
DR. GIDDIE MAJIT 1ST RESPONDENT

RULING

1. The respondent raised a preliminary objection to the suit to the effect that the suit offends the express provision of section 90 of the Employment Act, No. 11 of 2007 in that it was filed after expiry of three years limitation period.
2. From the memorandum of claim filed on 8th August 2014, the grievant gave a notice to terminate her employment with the respondent by a letter dated 7th December 2009. The notice was to take effect on 8th January 2010.
3. The grievant had served the respondent as a house help for six (6) years and eight (8) months.
4. The grievant was not paid terminal benefits and she reported the dispute to the union KUDHEIHA which union in turn reported a dispute to the Ministry of Labour by a letter dated 12th April 2010. The dispute reported was “*wrongful termination of Elly Joy Muthoni.*”
5. The Chief Industrial Relations Officer appointed a conciliator in terms of section 65 (1) of the Labour Relations Act. The conciliator appointed was Mr. S. M. Mwaniki of Nyayo House, Labour office.
6. Conciliation process did not bear fruit and the conciliator did not issue a certificate of unresolved dispute. The claimant finally filed the suit.

Response

7. The claimant opposes the preliminary objection on the basis that the claimant had followed the mandatory statutory conciliation procedure before filing suit hence the delay. The suit was filed over four (4) years from the date of resignation.
8. The respondent has filed a memorandum of response in which it admits particulars of employment and separation. The respondent does not also deny that the dispute was subjected to statutory conciliatory set out under paragraphs 2.20 to 2.25 of the memorandum of claim.
9. The issue for determination is whether time was running for purposes of limitation, while the parties were engaged in statutory reconciliation at the Ministry of Labour.

10. There are conflicting decisions on this aspect which await resolution by the Court of Appeal.

11. It is important to note that all disputes based on contract, are to be filed within six (6) years in terms of section 4 (1) of the 11. Limitation of Actions Act, Cap 22 of the laws of Kenya. However section 90 of the Employment Act, abridged this period to three (3) years with a caveat that continuous injury is not subject to three year limitation, but time lapses, one year after the injury ceases.

12. The claim by the claimant is not one for unlawful and unfair termination of employment, it being clear from the pleadings that the claimant resigned from employment but was not paid terminal benefits upon tendering the letter of resignation.

13. Failure to pay terminal benefits due and owing to an employee constitutes continuous injury in my mind, in terms of the proviso to section 90.

14. For these reasons, I dismiss the preliminary objection and allow the suit to be heard on its merits.

Dated and delivered at Nairobi this 2nd day of December 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE