



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 11 OF 2015

KENYA ELECTRICAL TRADES & ALLIED WORKERS UNION CLAIMANT
VERSUS
KENYA POWER AND LIGHTING COMPANY..... RESPONDENT

RULING

1. The Respondent filed grounds of opposition to this suit on 27th February 2015 to wit;

“The Claimant’s employment was terminated on 1st January 2009. Any cause of action intended to be asserted herein is accordingly time barred by dint of the provisions of Section 90 of the Employment Act.”

2. The suit was filed on 13th February 2015 simultaneously with an Application to file the suit after the limitation period.

3. The Application is supported on grounds set out on the face of the Notice of Motion to wit;

“6. that the delay in filing suit was caused by the Claimant / Applicant and Respondent engaging in conciliatory processes as seen from minutes for their meeting on the 5th November 2009.

7. that the conciliatory process forms part and parcel of the arbitration process therefore Claimant cannot be locked out on grounds of not having sought redress within time limit set in statute.”

4. The Application is buttressed by the Affidavit sworn by Kosgey Kolil the Deputy Secretary General of the Claimant / Applicant on 13th February, 2015.

5. The Applicant submits that during the conciliation process, running of time is suspended until the outcome of the process is known.

Determination

6. The cause of action arose on 6th January 2009, when the Claimant was summarily dismissed from employment. The suit was filed on 13th February 2015 more than six (6) years from the date the cause of action arose.
7. It is not indicated when the report of dispute was made to the Minister of Labour but a conciliator was appointed on 11th January 2012 going by the letter dated 18th April 2012 annexed to the supporting Affidavit and marked “KKI”.
8. The conciliation process therefore commenced after three (3) years from the date the cause of action arose. By that time the matter was already statute barred upon expiry of three (3) years from the date the cause of action arose by dint of **Section 90** of the Employment Act, 2007.
9. The application for extension of time is refused with the result that the suit stands dismissed in its entirety.

Dated and Delivered at Nairobi this 29th day of May, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE