



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 297 OF 2013**

**KENYA PLANTATION & AGRICULTURAL**

**WORKERS UNION.....CLAIMANT**

**v**

**KENSALT LIMITED.....1<sup>st</sup> RESPONDENT**

**SALT MANUFACTURERS (K) LTD..... 2<sup>nd</sup> RESPONDENT**

**RULING**

1. The Kenya Plantation & Agricultural Workers Union (the Union) commenced legal proceedings against Kensalt Limited and Salt Manufacturers (K) Ltd (Respondents) and the issue in dispute was stated as *wrongful dismissal and/or termination of Geoffrey Muroki*.
2. The Respondents filed a Response on 25 April 2014, and on 18 March 2015, they filed a Notice of Preliminary Objection contending that pursuant to section 90 of the Employment Act, 2007 the cause of action herein was statute barred because of limitation.
3. Objection was also raised on behalf of Salt Manufacturers (K) Ltd that it was not privy to the employment relationship between the Grievant and Kensalt Limited.
4. Because the latter objection would require the examination of evidence, the Court will not discuss it.
5. In the Memorandum of Claim, at paragraph 10 and 11, the Union pleaded that the Grievant Geoffrey Muroki worked until 11 January 2010, when he was informed verbally that his services were no longer required and that on 15 January 2010, he received a letter informing him to collect his full and final dues.
6. According to the Respondents, the Memorandum of Claim was filed outside the 3 year period allowed by section 90 of the Employment Act, 2007. In the view of the Respondents, the claim ought to have been filed on or before 12 January 2013, but it was instead filed on 4 September 2013.
7. The Respondent also contended that the Limitation of Actions Act did not contemplate extension of time or grant of leave to file claims based on contract outside the limitation period.
8. The Respondent cited the authorities *Maria Machocho v Total Kenya Limited* (2013) eKLR, *Divecon Limited v Samani* (1995-1998) 1 EA 48 and Nairobi Misc Cause No. 40 of 2013, *Joseph Odera Ochola v Kenya Railways Corporation*.
9. The Union opposed the objection and filed what it referred to as Statement of Reply to the Preliminary Objection. It was a lengthy document.
10. In the Reply, the Union admitted that the separation occurred on 11 January 2010, but contended that a trade dispute was reported to the Cabinet Secretary on 3 February 2010.
11. It is not disputed that the Cabinet Secretary appointed a conciliator and the conciliator released a report dated 29 August 2012. The Conciliator faulted the dismissal and recommended the payment

- to the Grievant of the equivalent of 6 months wages as compensation.
12. It is on record that the Respondents did not attend conciliation sessions despite invitation and it is contended that this was the cause of the delay in commencing action.
  13. The Union thus submitted that section 90 of the Employment Act, 2007 was not applicable.
  14. The Union cited the authorities of Nairobi Cause No. 71 of 2009, *Kenya Local Government Workers Union v Kangundo Town Council*, Nyeri Cause No. 29 of 2012, *Kenya Plantation & Agricultural Workers Union v Mununga Leaf Base and Banking, Insurance & Finance Union (K) v Barclays Bank of Kenya Limited* (2012) eKLR.
  15. Mr. Khisa submitted that once the provisions of section 62 of the Labour Relations Act were invoked and conciliation commenced, time stopped running for purposes of limitation and that time commenced running with the release of the Conciliator's report on 28 August 2012.
  16. Mr. Khisa disclosed that there was no certificate of unresolved trade dispute.

### **The authorities**

17. The case of *Kangundo Town Council* was anchored on the provisions of the Trade Disputes Act (repealed) and is not directly helpful.
18. But there is an interesting dicta therein by Rika J in regard to section 90 of the Employment Act, 2007. The Judge observed that Section 90 of the Employment Act 2007 however provides for the outer time limits irrespective of the mode used by a party in coming to Court. It basically means that in exercising his discretion, the Minister cannot exceed the outer time limits imposed by the Employment Act 2007. The discretion under the Labour Relations Act cannot extend the limit beyond the 3 years provided for under the Employment Act No. 2007. Otherwise the Minister or the Court would be acting against a mandatory provision of the law.
19. Abuodha J was also dealing with the provisions of the Trade Disputes Act (repealed) in the *Mununga* case.
20. In *Banking, insurance & Finance Union (K) v Barclays Bank of Kenya Ltd*, Ongaya J held that a trade dispute that is not resolved after conciliation as envisaged under Sub Section 73(1) of the Labour Relations Act, 2007 is a proceeding based on contract of service in general so that it must be instituted within three years from the date of the end of the conciliation proceedings or date a party to such proceedings declares none (sic) compliance with the recommendations of the Conciliation proceedings, whichever is last.
21. This holding to my mind suggests that the recommendations of the conciliator can found a cause of action of itself.
22. My view of the suggestion is that it is untenable in law. Untenable because the cause of action as known to law accrues, generally at the time a party suffers a legal injury or actionable wrong, and in complaints of unfair termination or wrongful dismissal, it is the date of unfair termination or wrongful dismissal. Conciliation cannot be an exception to the general rule.
23. The *Maria Machocho* case, the *Divecon* case and the *Joseph Ochola* case are also not helpful in so far as the holding was that the Court has no jurisdiction to extend time or grant leave to commence action outside the prescribed limitation time. In the instant case, the real issue is whether time stops running because of ongoing conciliation.
24. I dealt with the issue of time stopping running during conciliation in *Peter Nyamai & Ors v M J Clarke* (2013) eKLR and today in Nakuru Misc Cause No. 3 of 2015, *Kenya Electrical Trades & Allied Workers Union v Kenya Power & Lighting Co. Ltd*.
25. It is not clear whether the dispute reported herein to the Cabinet Secretary was resolved at conciliation, the Respondent having failed to attend conciliation and no report of agreement as required by section 68 of the Labour Relations Act pleaded or exhibited.
26. In my view, the correct legal position is reflected in the dicta by Rika J in the *Kangundo Town Council* case that

*Section 90 of the Employment Act 2007 however provides for the outer time limits irrespective of the mode used by a party in coming to Court.*

27.The Union has not presented any arguments before me which would make me change my mind.

**Conclusion and Orders**

28.In conclusion, the preliminary objection is up held and the Memorandum of Claim is struck out with no order as to costs.

**Delivered, dated and signed in Nakuru on this 29<sup>th</sup> day of May 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Khisa (Organising Secretary) Kenya Plantation & Agricultural Workers Union

For Respondent Mr. Masinde, instructed by Boniface Masinde & Co. Advocates

Court Assistant Nixon