



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 28 OF 2015

HUKO GUYOO BORU	1st CLAIMANT
DAVID KIPLANGAT MUTAI	2nd CLAIMANT
MUIYANGAL ELEPARATOI	3rd CLAIMANT
ADIJA BIDU GUYO	4th CLAIMANT
ANNA LEMUNTIY	5th CLAIMANT
PETER KIBOTE MUTHUA	6th CLAIMANT
NANCY CHEPKUKI KITUR	7th CLAIMANT
SIMELOLE RINGA	8th CLAIMANT
AMINA OMARI SALESA	9th CLAIMANT
HABIBA HUKO GUYO	10th CLAIMANT
DAVID KAMAU KIBOTE	11th CLAIMANT
DAHIR MOHAMED KALGALO	12th CLAIMANT
JOSEPH GICHURU MANYARA	13th CLAIMANT
JOSEPHINE NANYAMA WAMALWA	14th CLAIMANT
ANNA KASONY LOMODONY	15th CLAIMANT
FRANCIS L. LEKODONYO	16th CLAIMANT
ABDULLAHI HUKA GUYO	17th CLAIMANT
YUSUF KUTU NYURA	18th CLAIMANT
LILIAN NJAMBI	19th CLAIMANT

BERNARD RUCHU KIBOTE

20th CLAIMANT

PATRICK MUGAITO NTABO

21st CLAIMANT

v

DELAMERE ESTATES

RESPONDENT

RULING

1. The 21 Claimants commenced legal proceedings against Delamere Estates (Respondent) on 4 February 2015 and they stated the issues in dispute as
 - a) Whether the Claimants' termination was lawful?
 - b) Whether the Claimants were paid all their dues?
 - c). Whether the Claimants is (sic) entitled to the reliefs sought?
2. In paragraph 11 of the Memorandum of Claim, the Claimants prayed for overtime, service pay; and maternity leave pay for 3rd and 10th Claimants.
3. The Respondent filed its Response on 17 March 2015, and it contended that the question of overtime had been one of the issues before a Conciliator and the same had been rejected.
4. The Respondent further contended in the Response that pursuant to section 90 of the Employment Act, 2007, the question of overtime was statute barred, the claim having been raised 7 years after declaration of redundancies.
5. On 23 March 2015, the Respondent filed a Notice of Preliminary Objection. The grounds for the objection were that the Cause was incompetent, fatally defective and an abuse of the Court's process. The issue of the cause being statute barred was also raised.
6. The objections were taken on 9 April 2015.
7. According to the Respondent, the Claimants were declared either dismissed or declared redundant in 2006, and the redundancies were subject of conciliation and the Conciliator gave his reports on 29 March 2007 and 17 April 2014.
8. The Respondent further contended that the 3rd and 10th Claimants maternity leave claims were raised 7 years after the redundancy and thus statute barred by section 90 of the Employment Act, 2007.
9. The Claimants in a brief response submitted that the preliminary objection was no preliminary objection as it raised questions of evidence.
10. The Claimants Memorandum of Claim, in the view of the Court was deliberately vague. The Court says so because the Claimants avoided setting out when the unlawful terminations occurred. They only made reference to when the Conciliator gave his report (29 March 2007), and to a letter dated 19 June 2009 appointing one Ms. Winnie Otieno of Naivasha Labour Office as conciliator instead of Ms. F. M. Kamau.
11. Even the witness statement by Huko Guyo Boru (1st Claimant) and Muiyangal Eleparatoi (3rd Claimant) did not refer at all to the date of redundancies.
12. On the issue of limitation, it is clear beyond any doubt from the letter dated 29 March 2007 by

J.N. Makaa, Provincial Labour Officer, Rift Valley, that the Claimants were declared redundant around 2006. The epicenter of any cause action rotated around unlawful termination (through redundancy) and therefore the cause of action accrued in 2006.

13. The Respondent on its part in paragraph 2 had clearly pleaded that the Claimants were declared redundant in 2006.

14. The Claimants did not make a rejoinder to the Response on the pleaded date of redundancy.

15. In 2006, the Employment Act, 2007 was not in place and therefore the reliance on section 90 of the Employment Act, 2007 by the Respondent is misplaced. The Act commenced on 2 June 2008.

16. The said Act and section 90 thereof do not apply to the present Cause.

17. The primary and applicable statutes on employment were the Trade Disputes Act (repealed) and the Employment Act, cap. 226 (repealed).

18. The Trade Disputes Act (repealed) did not have any express provisions on limitation. But it had certain timelines within which disputes were to be reported and resolved. If there was failure to resolve a dispute, it was upon the Minister responsible for Labour to refer the dispute to Court.

19. That never happened. In the meantime, the statutory framework governing trade disputes and employment complaints changed radically with the enactment of the Employment Act, 2007 and the Labour Relations Act.

20. The substantive statute governing limitation was the Limitation of Actions Act. Section 4(1) of the Act provided for a limitation of 6 years for causes of action arising out of contract.

21. If the Limitation of Actions Act were applicable to trade disputes, the Claimants should have commenced their legal action latest by end of 2012.

22. The present action was commenced on 4 February 2015, clearly outside the time set by the primary statute of limitation applicable at the time.

23. As to the heads of claim, in any case, the Claimants have not even bothered to set out either a statutory or contractual foundation.

24. The Claimants must have been cognizant of the limitation issue and that is why they pleaded the case vaguely.

25. In fact, the Claimants attempt to be vague is further demonstrated by the fact that they did not mention the outcome of the second conciliation under Ms. Otieno.

26. In his report dated 17 April 2014, and which report was sent to the Claimants Union, P.N. Macharia made findings of facts that the Claimants were paid overtime as evidenced by individual pay slips and other terminal benefits and recommended that the parties accept his recommendations.

27. In the view of the Court, the present Cause is not only statute barred pursuant to section 4(1) of the Limitation of Actions Act, but ill advised and an abuse of the Court process, the conciliators having made findings of fact which have not been challenged. No life can be breathed into it with any amendments.

28. The Court therefore strikes it out with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 22nd day of May 2015.

Radido Stephen

Judge

Appearances

For Claimants

Mr. Kibet, instructed by Mirugi Kariuki & Co. Advocates

For Respondent

Mr. Kinyanjui, Legal Officer, Agricultural Employers Association

Court Assistant

Nixon