



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1343 OF 2014

CAROLYN KIPKENY ARKACH.....CLAIMANT

VERSUS

TELKOM KENYA LIMITED.....RESPONDENT

RULING

1. The respondent in this matter raised as preliminary the objection that the claim herein was filed out of time limited by the Limitation of Action hence the Court lack jurisdiction to entertain the same.
2. According to the respondent, the claimant was dismissed from employment on 29th April, 2004 hence this claim, going by the six-year limitation rule, should have been filed on or before 29th April, 2010 and not 12th August, 2014 when it was filed.
3. The claimant however contended that time began to run from when the conciliator made his decision after referral of the dispute by the Minister in accordance with section 6 of the Trade Disputes Act (now repealed). According to the claimant, the decision of the conciliator was made on 25th July, 2013 and the claim herein filed on 12th August, 2014. This period was less than the 6 years period prescribed by the Act.
4. I have carefully reviewed the documents filed by the parties in support of their respective positions regarding this claim.
5. This dispute was reported to the Minister on behalf of the claimant by his union on 26th November, 2009. The Minister acknowledged the dispute on 19th July, 2010 and appointed a Mr. Bii of Nyayo House to act as a conciliator. Mr. Bii was later on 30th July replaced by a Mr. F. Okello. Mr. Okello after hearing the parties and their submissions gave his report dated 25th July, 2013.
6. The Court has held in the case of **Kenya Plantation & Agricultural Workers Union v. Murunga Leaf Base (2013) eKLR** that resolution of Labour and employment disputes is a process with the Court in most cases, the final arbiter. Once a dispute is submitted for resolution under the provisions of the Trade Disputes Act (now repealed) or the Labour Relations Act, the cause of action becomes suspended until the outcome of the conciliation process is known.

7. The outcome of the conciliation process became known on 14th August, 2013 when the letter dated 25th July, 2013 was received by the claimant's union. This suit having been filed on 12th August, 2014 cannot therefore be said to have been filed out of time.

8. The preliminary objection is therefore overruled with the consequence that the suit shall proceed to trial on merit.

9. It is so ordered.

Dated at Nairobi this 30th day of October 2015

Abuodha J. N.

Judge

Delivered this 30th day of October 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge