



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1831 OF 2013**

**KENYA PETROLEUM**

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

**VERSUS**

**TOTAL (K) LIMITED ..... RESPONDENT**

**RULING**

1. The Respondent has taken a preliminary objection against the suit filed by the Claimant on 18<sup>th</sup> November 2013.
2. The cause of action in the suit is wrongful and unfair termination from employment of Lawrence Paul Macharia Mutero, the Grievant based on contract of employment between the Grievant and Total Kenya Limited the Respondent.
3. In terms of the particulars of claim, on 18<sup>th</sup> September 1995 the employment of the Grievant was terminated by a letter of the same date written by the Personnel and Administrative Manager J. M. Mathenge. The letter is attached to the statement of claim and marked "APE".
4. An appeal to the Administrative Manager was ignored by the Respondent and the Claimant wrote to the Joint Industrial Council (JIC) on 3<sup>rd</sup> November 1995 according to the governance procedure between the parties.
5. On 3<sup>rd</sup> January, 6<sup>th</sup> February and 10<sup>th</sup> April, 1996, the Joint Industrial Council heard the dispute and pointed that the Grievant be reinstated but this was not implemented.
6. A dispute was reported to the Ministry of Labour on 18<sup>th</sup> October 1996 and a Conciliator was appointed on 13<sup>th</sup> February 1997.
7. The matter delayed at the Ministry of Labour due to non-co-operation by the Respondent and the thirty (30) days within which a conciliator is to deal with the matter lapsed.

**Issues for determination**

- i. Does the time run when the dispute is under statutory conciliation in terms of the Trade disputes Act? (now repealed)
- ii. Is the dispute time barred?

**Issue i**

8. It is common cause that the suit was filed more than eighteen (18) years from the date the cause of action arose.
9. The law on limitation applicable to the suit then is the limitation of Actions Act, Cap 22 of the laws of Kenya.

10. In terms of Section 4(1) thereof, all suits founded on contract have to be filed within six (6) years from the date the cause of action arose.
11. The Claimant did not file an application seeking leave to file this suit out of time. However, the Limitation of Actions Act does not allow the Court to extend time in respect of suits founded on contract.
12. Arguments that time does not run during the statutory conciliatory period is only limited to the thirty (30) days period within which the Conciliator is mandated to investigate the dispute and the conciliator either makes a report with findings for implementation by the parties or issue a certificate of unresolved dispute with a view to have the dispute be ventilated in Court.
13. The delay in filing this matter is so inordinate that the argument that filing was delayed due to the engagement of the parties in the statutory conciliation process does not hold water. It was incumbent on the Grievant through his union representatives to heed the limitation period and file the suit in time.
14. The preliminary objection is upheld with the result that the suit is dismissed in its entirety with no order as to costs.
15. The order for costs is refused because the Respondent was largely responsible for the delay in the conciliation process and largely contributed to the late filing of the suit.

**Dated and Delivered at Nairobi this 9<sup>th</sup> day of December 2015**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**