



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NO. 601 OF 2014**

**KENYA PETROLEUM WORKERS UNION.....CLAIMANT**

**VS**

**KENYA PIPELINE COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The claimant brings this suit on behalf of Mr. Martin Warutere Gichuru (Grievant). The grievant was employed by the respondent on 6.3.1996 as a Technical operator and worked until 3.2.2009 when he was summarily dismissed for gross misconduct. Thereafter the grievant reported the matter to the claimant who lodged a dispute with the Labour office. That the dispute was never resolved and the claimant brought this suit on 28.11.2014. The suit seeks to recover terminal dues plus compensation for unfair termination.
2. The respondent has denied liability for unfair termination or breach of the grievant's employment contract. On the contrary she avers that the grievant was fairly dismissed for absenteeism and drunkenness and after being accorded a disciplinary hearing before dismissal.
3. The suit was heard on 8.9.2015 where the grievant testified as Cw1 but the respondent never attended the hearing. Thereafter the claimant filed written submissions.

**Analysis and Determination**

4. There is no dispute that the grievant was summarily dismissed on 3.2.2009 for gross misconduct. There is also no dispute that he was given a hearing on 4.12.2008 before his dismissal. The issues for determination are:
  - a. Whether the suit is time barred,
  - b. Whether the dismissal of the grievant was unfair
  - c. Whether the prayers sought to issue.

**Time barred suit**

5. The claimant pleaded that the grievant was dismissed on 3.2.2009, a fact which was admitted by

Cw1 under oath during his testimony. This court finds no difficult in finding and holding that this suit is time barred under section 90 of the Employment Act (EA). The said provision limits the time within which to file a suit based on employment contract to 3 years from the time when the cause of action arose or in case of continuing breach, default or injury, 12 months from the time when the breach, default or injury ceased. In this case the 3 year window for the grievant closed on 2.2.2012. The cause of action has since expired and this court lacks jurisdiction over it. Consequently the court must down its tools for lack of jurisdiction to determine the suit on merits.

**Disposition**

6. For the reasons stated above, the suit is struck out with no orders as to costs.

**Signed, Dated and Delivered this 4<sup>th</sup> day of December, 2015**

**ONESMUS MAKAU**

**JUDGE**