



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 536 OF 2013

[Consolidated with Cause Numbers 537, 627, 628, and 629 all of 2013]

BETWEEN

1. MAURICE ODONGO
2. LUCAS OJWANG
3. STEPHEN AMOLLO
4. JOAB ACHIENG
5. LAWRENCE KITHUKA.....CLAIMANTS

VERSUS

AFRO PLASTICS KENYA LIMITED RESPONDENTS

Rika J

CC. Kidemi

Claimants appearing in person

Respondent appearing through Mr. Njiru Advocate, instructed by the Federation of Kenya Employers for the Respondent

RULING

1. The Respondent raised a preliminary objection on the validity of the 5 consolidated Claims, based on the time limit imposed by Section 90 of the Employment Act 2007 on the filing of employment Claims. All the Claimants were Employees of the Respondent, working in various capacities. Their contracts were terminated early March 2009. They only filed their respective Claims in April and May 2013, a clear 4 years after their contracts were terminated. Section 90 stipulates the proceedings must be instigated within 3 years after the cause of action arose, or within 12 months after the cause of action arose in cases of continuing injury or damage.

2. The law is as argued by Mr. Njiru, and a succession of judicial opinions from the Industrial Court, and other Courts on statutory time limits, confirm time limits involve the temporal jurisdiction of the Court.

Limitation of time under Section 90 is not a procedural issue, but a substantive law, which goes to the root of the Court's mandate to hear and determine the matter, and which confers the parties with substantive rights. The Respondent would therefore be justified in seeking the dismissal of the Claims.

3. The Court is however required to examine all the facts that may have had an effect on the Claimants ability to meet the time limit under Section 90, before throwing out their Claims in their entirety. The Parties agree the Claimants were Members, or are Members of the Kenya Chemical and Allied Workers Union. The Claimants in fact allege there were negotiations involving their Trade Union and the Federation of Kenya Employers, prior to the filing of the Claims. These negotiations did not yield the desired results for the Claimants, and they proceeded to the KITUO CHA SHERIA [Legal Aid Centre], who assisted them in filing the late Claims.

4. The Court thinks as the FKE has been involved in negotiations with the Claimant's Trade Union, it is neither just, nor fair, that the Claims are struck out in their entirety, without the Claimants having any further recourse under the Labour Relations Act Number 14 of 2007. As submitted by Mr. Njiru, it is not clear on the face of the record, why their Trade Union did not pursue the Claim on behalf of the Claimants. The Labour Relations Act under Section 62(3) confers on the Minister for Labour, discretion in receiving wrongful termination disputes out of time. The Claimants should not be deprived of the possibility of settlement of their Claims under this procedure. The decision of a Court on the effect of Section 90 of the Employment Act 2007, should not foreclose the right of the Claimants to be heard in a non-adjudicatory mechanism. The Court shall therefore make the following Orders:-

[a] The Consolidated Claims are hereby struck out, without prejudice to the Claimants reporting a fresh trade dispute through their trade union to the Cabinet Secretary/Minister for Labour, under the Labour Relations Act; and

[b] No order on the costs

Dated and delivered at Nairobi this 30th day of January 2014

James Rika

Judge