



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 2331 OF 2012

FRANCIS MUTHINI MUE.....CLAIMANT

VS

RAKESH ANAND T/A RAUNAQ RESTAURANT

(A.K.A JEATZ RESTAURANT.....RESPONDENT

RULING

Introduction

1. This ruling relates to the Respondent's Preliminary Objection raised by notice dated 17th June 2013 on the ground that the Claimant's claim is time barred. The objection was heard on 22nd November 2013 with Mr. Maingi appearing for the Claimant and Mr. Maitsi for the Respondent.

The Respondent's Submissions

2. Counsel for the Respondent submitted that the Claimant's claim dated 26th October 2012 and filed on 16th November 2012, was statute barred by dint of Section 90 of the Employment Act, 2007. According to the Respondent, the Claimant having left employment on 9th November 2007, ought to have filed his claim by 8th November 2010.

3. Counsel further submitted that limitation was an issue of jurisdiction and the Court had no option for extension of time under Section 90 of the Employment Act, 2007. At any rate, the Claimant had not sought leave for enlargement of time prior to filing of his claim.

The Claimant's Submissions

4. In opposing the Respondent's Preliminary Objection, Counsel for the Claimant submitted that Section 90 of the Employment Act, 2007 defines the circumstances that give rise to a cause of action. According to Counsel the phrase "*next after the act, neglect or default complained*" found in Section 90 did not merely refer to the act of terminating an employment contract.

5. In the instant case, "*the act, neglect or default complained*" referred to the Respondent's neglect to comply with the instruction issued by the District Labour Office vide its letter dated 5th February 2010. Consequently, the 3 year limitation period set in Section 90 began to run from 5th February 2010 and the Claimant's claim was therefore within time.

The Respondent's Final Reply

6. In final reply, Counsel for the Respondent submitted that the “*neglect or default*” within the meaning of Section 90 of the Employment Act, 2007 relates to termination of employment and not the Respondent's failure to comply with the instructions issued by the District Labour Office.

Ruling by the Court

7. The question as to when time begins to run with respect to employment and labour matters which are first referred to conciliation is well settled. In the case of ***Kenya Scientific Research International Technical and Allied Workers Union Vs Rainald Schumera [2012] ECLR***, Wasilwa J held that the limitation period in employment and labour matters does not begin to run until the conciliation process is exhausted.

8. Similarly, in the case of ***Kenya Plantation and Agricultural Workers Union Vs Mununga Leaf Base [2013] ECLR***, Abuodha J held that once a dispute is referred to conciliation, accrual of the cause of action is suspended until the outcome of the conciliation process is rendered.

9. It is not in contest that the dispute in this case was the subject of a conciliation process before the District Labour Office in Nairobi with the last communication between the District Labour Office and the Respondent being on 5th February 2010. Time did not therefore begin to run against the Claimant until the deadlock reached by the Respondent's failure to respond to the instructions issued by the District Labour Officer on 5th February 2010.

10. I therefore find that the Claimant's claim which was filed on 16th November 2012 was well within time. The Respondent's Preliminary Objection is consequently dismissed with costs to the Claimant.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF JANUARY 2014

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JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*