



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1201 OF 2012**

**BANKING, INSURANCE AND**

**FINANCE UNION (K) LIMITED ..... CLAIMANTS**

**VERSUS**

**BANK OF INDIA ..... RESPONDENTS**

Mr. Ituko for Respondent / Applicant

Mr. Odero for Claimant / Respondent

**RULING**

1. A notice of intended appeal was noted against the ruling of this court dated 6<sup>th</sup> September 2013, in which it was found the matter was not time barred because in terms of the *Trade Disputes Act Cap 234*, a labour suit could not be filed at the Industrial Court without first reporting the same to the Minister for Labour in terms of *Section 4(4)* and a certificate of unresolved dispute issued in terms of *Section 8* thereof.

2. The Court found therefore that time stopped to run as soon as the claim was lodged for conciliation with the Minister as this was a mandatory pre-trial procedure.

The Applicant seeks a stay of proceedings pending the hearing and determination of the intended Appeal.

3. The Grievants herein were dismissed from their employment on 27<sup>th</sup> April 2005 and lodged their suit on 17<sup>th</sup> July 2012 and the matter is pending hearing on the merits. Counsel for the Applicant submitted that considerations by the Court are whether;

- i. the Application was filed without undue delay;
- ii. the intended Appeal is arguable; and
- iii. the grant of the stay would enhance optimum utilization of Judicial time.

On the other hand the Grievants are entitled to timely delivery of justice which is likely to be unduly delayed by having to wait for the hearing of the intended Appeal.

4. They have submitted that by the Authority in the case of **Francis Muthini Mue Vs. Raksh**

**Award T/A Ranwaa Restaurant & Another**, it is settled law that where there is a mandatory pre-trial procedure as was the case under *Trade Disputes Act*, time stops to run as soon as the pre-trial procedure is put in motion.

In this case Hon. Justice Linnet Ndolo relying on a decision of **Wasilwa J. in Kenya Scientific Research international Technical and Allied Workers Union Vs. Rainald Schuvera [2012] e KLR held:**

*“limitation period in employment and labour matters does not begin to run until the conciliation process is exhausted.”*

Similarly, Abuodha J. in *Kenya Plantation and Agricultural Workers Union Vs. Mununga Leaf Base [2013] e KLR 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.”*

5. I am emboldened by these decisions of the Industrial Court to affirm my decision in this matter that this was even more so under the old labour legislation which made it absolutely mandatory for a party to obtain a certificate of unresolved dispute to access the Industrial Court.

Once the conciliation process commenced, time stopped to run for purposes of limitation of time with respect to labour matters.

6. Accordingly, I do not find any justification to stay the hearing of the main suit pending the intended appeal in line with the three considerations cited herein before.

7. The Application for stay is therefore dismissed with costs in the cause.

The parties are to proceed to set down the main claim for hearing on the merits.

***Dated and delivered at Nairobi this 28th day of March, 2014.***

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**