



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 1305 OF 2010**

**KENYA BUILDING CONSTRUCTION TIMBER FURNITURE AND  
ALLIED INDUSTRIES EMPLOYEE UNION.....CLAIMANT**  
**VS**  
**S.S MEHTA AND SONS LIMITED.....RESPONDENT**

**RULING**

**Introduction**

1. On 26<sup>th</sup> October 2010, the Claimant filed a Memorandum of Claim on behalf of its members who had been dismissed by the Respondent. The Respondent filed a Reply on 28<sup>th</sup> October 2011. The Respondent subsequently filed a Notice of Preliminary Objection on 10<sup>th</sup> June 2013 which is the subject of this ruling.

**The Preliminary Objection**

2. The Respondent's Preliminary Objection is based on the following grounds:
- a. That this Court has no jurisdiction to entertain the Claimant's claim;
  - b. That the Memorandum of Claim is bad in law;
  - c. That the Claimant has no capacity to bring these proceedings;
  - d. That the Claimant has no cause of action against the Respondent;
  - e. That the suit is fatally and incurably defective;
  - f. That the suit is an abuse of the court process.
3. In the Respondent's written submission filed on 31<sup>st</sup> October 2013, it was submitted that the Claimant's claim is time barred since the termination dates of the respective grievants as pleaded by the Claimant range from 23<sup>rd</sup> December 2004 to 30<sup>th</sup> October 2006. The claim therefore ought to have been filed by 25<sup>th</sup> October 2009.

**The Claimant's Reply**

4. In the Claimant's written submissions filed on 27<sup>th</sup> November 2013, it was submitted that under the Labour Relations Act, a Trade Union is entitled to bring a claim to the Industrial Court on behalf of its members once the conciliation process is exhausted.
5. The dispute herein was first referred to investigation under the Trade Disputes Act (now repealed) and later to conciliation under the Labour Relations Act. The parties failed to agree and the Conciliator issued a certificate of disagreement in 2010.

**Determination**

6. Although the Respondent's Notice of Preliminary Objection carries a list of 6 grounds, the written submissions focus on the issue of limitation of the Claimant's claim only. The Respondent's submission in this regard is that since the cause of action arose between 23<sup>rd</sup> December 2004 and 30<sup>th</sup> October 2006, the claim which was filed on 26<sup>th</sup> October 2010 is statute barred by dint of Section 90 of the Employment Act, 2007.
7. With much respect to Counsel for the Respondent, this argument is not supported by law. First, assuming that the cause of action herein arose between 23<sup>rd</sup> December 2004 and 30<sup>th</sup> October 2006, this claim would be outside the purview of the Employment Act, 2007 which came into operation in 2008. The applicable limitation law would therefore be the Limitation of Actions Act which pegs the limitation period at 6 years.
8. Secondly, there is now firm jurisprudence in this Court to the effect that once labour disputes are referred to conciliation, time stops to run until the conciliation process is brought to closure (see *Kenya Scientific Research International Technical and Allied Workers Union Vs Rainald Schumera [2012] ECLR- Wasilwa J* and *Kenya Plantation and Agricultural Workers Union Vs Mununga Leaf Base [2013] ECLR- Abuodha J*).
9. In view of the foregoing, I find that the Claimant's claim as filed is well within time.
10. No argument was advanced on the other grounds set out in the Notice of Preliminary Objection and they are therefore dismissed. The result is that the Respondent's objection is overruled with costs to the Claimant.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 1ST DAY OF APRIL 2014**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....*Claimant*

.....*Respondent*