



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NYERI**

**INDUSTRIAL CAUSE NO. 12 OF 2013**

PAULINE WAITHIRA MURAGURI.....CLAIMANT

VERSUS

MURANG'A FARMERS CO-OPERATIVE UNION LTD.(FORMERLY  
KNOWN AS MUGAMA FARMERS CO-OPERATIVE UNION LIMITED).....RESPONDENT

**RULING**

1. Mr. Muthuri for the Attorney General has raised a preliminary objection to this suit arguing that the same is statute barred in view of section 90 of the Employment Act. According to him, the suit ought to have been filed within three years of the accrual of cause of action. That is to say, the claimant was retired on 1st January, 2006 and the claim filed on 14th February, 2013. According to counsel, this was way beyond 3 years. He submitted that since limitation goes to jurisdiction, the claim ought to be struck out. He relied on the case of **George Njoroge Mwaura vs Whispering Palm Hotel Ltd. & another Cause No. 80 of 2012.**
2. Mr. Mbuthia for his part opposed the preliminary objection and annexed some six letters to show that there was conciliation going on. Further, by a letter dated 16th September, 2010, the respondent admitted the debt and stated that they would pay once they receive funds from the government. This letter according to counsel gave a new lease of life to the claim. Therefore 3 years from the letter had not lapsed by the time the suit was filed. Counsel further submitted that the claimant's passbook marked as "E" in his bundle of documents show she was paid [in 2011 and 2012, these payments according to counsel waived limitation.
3. As pointed out by Mr. Mbuthia, this dispute was reported by the Branch office of KUCFAW to their head office on 2nd April, 2009 stating that the dispute was over non-payment of grievant's terminal dues. The head office formally reported the dispute to the Ministry on 8th April, 2009.
4. By a letter dated 7th July, 2010 the Ministry advised the parties to refer the matter to Industrial Court as a last resort since the respondent had not honoured a resolution reached in July, 2009 in which the respondent agreed to pay 50% of the claim over a period of one year with effect from 17th July, 2010. By a letter dated 16th September, 2010 the respondent sought indulgence of the Labour office over the matter as it was being prioritized once funds were received from the government to clear the respondent's debts. The letter further thanks the Labour office for cancelling the letter dated 7th July, 2010 referred to above.
5. From the chronology of events set out above, the question that requires to be answered is when the

cause of action actually accrued. That is to say, was it in 2007 or when it became clear that the respondent was not going to pay the claimant's terminal benefits?

6. This court has held in the case of **Kenya Plantation & Agricultural Workers Union vs Mununga Leaf Base [2013] eKLR** that resolution of labour and employment disputes is a process with the Industrial Court in most cases as the final arbiter when other pre-court mechanisms fail. What this means is that once a disputant invokes the prescribed dispute resolution mechanisms, the accrued cause of action becomes suspended until the outcome of the conciliation process is known.
7. The failure of the conciliation process to warrant litigation is usually known when the conciliator issues his certificate referring the dispute to the Industrial Court in accordance with section 69 of the Labour Relations Act.
8. It is acknowledged that the purpose of statutes of limitation is to hold a balance between two competing interests: that is the interest of claimants in having maximum opportunity to pursue their legal claims, and the interest of the defendants in not having to defend stale proceedings. However, where it is unclear as to the exact point when the cause of action actually accrued, the court ought to lean more towards permitting access to its process than shutting out a potential claimant.
9. With regard to labour relations and employment disputes, the escalated process which has at its apex, the Industrial Court would be confusing and problematic to maneuver through were it be conducted against a background of the technicality of limitation. There is a sense in which it seems more just to hold that causes of action in labour relations and employment disputes, where they have been subjected to conciliation process, accrue at the point where conciliation fails and the conciliator issues his certificate in accordance with section 69 of the Labour Relations Act.
10. From the foregoing, the cause of action in this dispute accrued around 2010 when the conciliator issued his certificate and was renewed in February, 2012 when the respondent made part payment of the claim to the claimant. The filing of the suit in February, 2013 therefore was within time hence the objection as to limitation is overruled and dismissed with costs.
11. It is so ordered.

*Dated at Nyeri this 20th day of June, 2014.*

**ABUODHA N. J**

**JUDGE**

*Delivered in open Court in the presence of Mr. Warutere for Mr. Mbuthia Advocate for the Claimant and in the presence of Mr. Macharia for Mr. Kirubi Advocate for the Respondent.*

**ABUODHA N. J**

**JUDGE**