



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 1299 OF 2011**  
**BETWEEN**  
**JOYCE WANJIKU MUCHIKO.....1<sup>ST</sup> CLAIMANT**  
**COMMUNICATION WORKERS UNION OF KENYA.....2<sup>ND</sup> CLAIMANT**  
**VERSUS**  
**TELKOM KENYA LIMITED.....RESPONDENT**  
  
*Rika J*  
  
*CC. Edward Kidemi*  
  
*Mr. Onyony instructed by Onyony & Company Advocates for the Claimant*  
*Mrs. Mbabu instructed by P. K. Mbabu & Company Advocates for the Respondent*

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**ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION**

**AWARD**

This Claim was filed on 1<sup>st</sup> August 2011. The Claimant was employed by the Respondent Company as a Clerical Assistant II, on 31<sup>st</sup> March 1987.

She was suspended from duty on 23<sup>rd</sup> August 2002. Her contract of employment was subsequently terminated on 7<sup>th</sup> April 2006.

She seeks the following orders:-

- (a) A Declaration that termination was unfair, wrongful and unlawful.
- (b) Reinstatement of the Claimant without loss of benefits and seniority.
- (c) Payment of actual pecuniary loss from the date of termination to the date of determination of the dispute.

(d) Interests, costs and any other suitable relief.

The Claim was amended introducing the Communication Workers Union of Kenya as the 2<sup>nd</sup> Claimant, through the Amended Statement of Claim dated 1<sup>st</sup> October 2013.

The Respondent filed its initial Statement of Response dated 19<sup>th</sup> August 2011, and an Amended Statement of Response, dated 14<sup>th</sup> October 2013.

The Claimant was heard and rested her case on 12<sup>th</sup> February 2014. The respondent did not call any Witness, adopting its Pleadings and Submissions on record. The Parties confirmed the filing of their Closing Submissions on 2<sup>nd</sup> April 2014. The Advocates underscored these Submissions in brief presentations made before the Court on 23<sup>rd</sup> July 2014, and the decision of the Court reserved for today.

In paragraph 6 of the Amended Statement of Claim, the Respondent states that the Claim is statute-barred by the virtue of Section 90 of the Employment Act, 2007, which places a limit of 3 years on the filing of Claims based on the Act, or contracts of service in general.

The Claimant answers that her Claim is properly in Court. The applicable Law is the repealed Employment Act Cap 226 the Laws of Kenya, and the applicable Law on limitation is the Limitation of Action Act Cap 22 the Laws of Kenya, placing a limit of 6 years on the filing of contract disputes, from the date of accrual. 6 years had not lapsed by the time of filing the Claim.

*The Court Finds and Awards:-*

1. This argument by the Claimant is incorrect. Her prayers include the remedy of reinstatement, which was not given under the Employment Act Cap 226, but given under the Trade Disputes Act Cap 234 the Laws of Kenya, and the Employment Act 2007. She could only be pursuing reinstatement under the Trade Disputes Act or the Employment Act 2007.
2. In Paragraph 6 of the Amended Statement of Claim, the Claimant avers the termination of her contract of employment, contravened the Employment Act 2007.
3. She cannot invoke the reinstatement jurisdiction under the Employment Act 2007, while disregarding Section 90 on limitation contained in the same Act.
4. The Claimant was represented by a Trade Union, the 2<sup>nd</sup> Claimant herein, before filing the Claim. The dispute was referred to the Minister for Labour, and should have been dealt with under the transitional provision contained in Section 84 of the Labour Relations Act No. 14 of 2007.
5. Schedule 5 under this provision states that all termination disputes which arose before the passage of the Labour Relations Act, are to be dealt with in accordance with the Trade Disputes Act, Cap 234 the Laws of Kenya.
6. Reinstatement and the other secondary prayers sought, should therefore have been pursued under the procedure prescribed by the Trade Disputes Act.
7. The Claimant seems to have filed this Claim under the Employment Act 2007 and the Labour Institutions Act 2007 and while seeking to avoid the adverse limitation of time imposed by the Employment Act 2007, also invoked the old Employment Act to assist her in accessing the 6 years limitation available under the Limitation of Actions Act.
8. To the extent that the Claimant invokes the Employment Act 2007 on remedies, the Claim is statutory barred under Section 90 of the Employment Act 2007. And considering that she did not pursue her Claim under Section 84 of the Labour Relations Act, preserving the application of the Trade Disputes Act, the Court is persuaded the Claim is improperly before it.

On the two grounds, ***the Claim is dismissed, with no order on the costs.***

Dated and delivered at Nairobi this 16<sup>th</sup> day of September 2014

James Rika

Judge