

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 20'A' OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 22nd October, 2014)

JOHNSON ODUOR ONYANGO CLAIMANT

-VERSUS-

MASENO WEST SACCO SOCIETY LTD RESPONDENTS

R U L I N G

The respondents herein have raised a preliminary objection on limitation under paragraph 9 of their memorandum of response. It is their contention that the suit was filed out of time and should therefore be struck out.

The claimant filed his memorandum of claim on 19.2.2013. Under paragraph 5 of the memorandum of claim, he was terminated in October 2008. There seems to have been another suit between claimant and respondents being Kisumu Co-operative Tribunal Case No. 16 of 2009 which was withdrawn with no order as to costs.

The respondents contends that the claimant's services having been terminated on 7.10.2008 the claimant ought to have filed the claim within 3 years from the time the cause of action arose which is 6.10.2011.

The claimants submitted that they are not time barred by virtue of the fact that the limitation time did not begin to run until conciliation process had been settled and exhausted. It is their submission that the matter first went before the Co-operative Tribunal from 30.3.2009 to 3.12.2012 when it was withdrawn by consent of both parties to be canvassed at the Industrial Court on issues of termination. They therefore submitted that time started running from 3.12.2012 since the accrual of the cause of action was suspended until the out-come of the matter at the Co-operative Tribunal.

Having considered submissions of both parties, the issue for determination is whether the matter is time barred for being filed out of time.

As already indicated, the matter was filed on 19.2.2013 and by virtue of S. 90 of Employment Act 2007, the matter should have been filed within 3 years from the time the cause of action arose. The cause of action having arisen from the time the claimant was dismissed on 7th October, 2008. The three years would ordinarily lapse on 6th October 2011.

However there was already a dispute filed before the Kisumu Co-operative Tribunal Case No. 16/2009 which cause relates to the claimant and respondents. The claimant submitted that the parties agreed to have the matter withdrawn so as to be ventilated before the Industrial Court. This in my view was already a process of bringing the matter before the judicial process.

In the case of **Kenya Scientific Research International Technical & Allied Workers Union V Rainald Schumera (2012) eKLR**, I held that once a dispute is referred to conciliator, the accrual of the cause of action is suspended until the out-come of the conciliation process is rendered. By going to the Co-operative Tribunal, the time did not start running until 3.12.2012 when the case was withdrawn by the parties by consent. It is therefore my findings that the claimants have not filed this dispute out of time.

The preliminary objection therefore lacks merit and I dismiss it accordingly and order the case to process on merit.

HELLEN S. WASILWA

JUDGE

22/10/2014

Appearances:-

Abisai h/b Kowino for respondents present

Ayayo h/b Yogo for claimant present

CC. Wamache