

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NYERI

CAUSE NO.99 OF 2014

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITAL AND ALLIED WORKERS (KUDHEIHA).....CLAIMANT

-VERSUS-

KAHETI PRIMARY SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 28th November, 2014)

RULING

The respondent filed a notice of preliminary objection on 16.10.2014 through F.O.Makori, litigation Counsel, for the Attorney General. The respondent prayed that the memorandum of claim dated 25.08.2014 is struck out with costs on the grounds:

- a. That the memorandum of claim and the prayers therein contravened the mandatory provisions of section 90 of the Employment Act, 2007 and the claim is bad in law, misconceived and incompetent before the honourable court.
- b. That the memorandum of claim and the prayers therein contravened mandatory provisions of section 62 (3) and 67(1) of the Labour Relations Act, 2007.
- c. That the respondent will be highly prejudiced if the claimant's memorandum of claim is heard and determined as filed before the determination of the preliminary objection.

The memorandum of claim was filed on 2.09.2014. It was submitted for the respondent that cause of action was pleaded in paragraph 18 of the claim to have accrued on 14.03.2006. The claimant reported a dispute to the Minister on 17.03.2011 and conciliator's report was on 18.09.2011. under section 62 (3) of the Labour Relations Act, 2009, the claimant was required to report a dispute within 90 days but which was not done in the instant case. It was submitted for the respondent that the dispute having occurred on 14.03.2006 and the claimant having reported it to the Minister on 17.03.2011, the statutory 90 days for making such disputes had lapsed and it was irregular for the Minister to have appointed the conciliator over five years from the prescribed time. Further the conciliator was required to resolve the dispute within 30days from 18.04.2011 as per section 67 of the Labour Relations Act, 2007 failing which the dispute would stand unresolved as at 19.5.2011 when the 30 days lapsed. It was submitted for the respondent that from 19.05.2011 to 2.09.2014 when the suit was filed, the three years under section 90 had already lapsed. The respondent further submitted that the claimant's case was based on the Employment Act, 2007 as pleaded in the memorandum of claim so that the statutory provisions prior to the 2007 provisions did not apply.

For the claimant it was submitted that the grievant was declared redundant on 14.03.2006 and the case was reported to the claimant in March 2008 and to the Minister in 2011. The claimant submitted that section 67 (1) allowed parties to agree to extend the 30 days for resolving the dispute. The claimant further submitted that the respondent had filed an amended preliminary objection without leave of the court.

The court has considered the submissions. The court finds that even if the amended notice of preliminary objection was struck out, the initial notice as filed would sufficiently bring out the issues in dispute. The court has considered the submissions and finds that the respondent's preliminary objection is merited on the grounds as submitted for the respondent. The court upholds the respondent's submissions together with the prayers made in the preliminary objection.

In conclusion the respondent's preliminary objection is upheld as urged and the memorandum of claim is dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 28th November, 2014.**

BYRAM ONGAYA

JUDGE