

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NYERI

CAUSE NO.99 OF 2014

(Formerly Industrial Court Cause No. 819 of 2013 at Nairobi)

ROSE NJERI KIURA & 77 OTHERS.....CLAIMANTS

-VERSUS-

MUNICIPAL COUNCIL OF EMBU.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 7th November, 2014)

JUDGMENT

The respondent filed on 09.07.2014 a preliminary objection against the suit on the grounds that the suit was time barred under the provisions of section 4 of the Limitation of Actions Act, Cap.22; and that the suit was against a non-existent entity in light of section 134 of the County Government Act because the suit having been filed on 30.05.2013, it was outside the suits saved under the provisions of the section (being the suits that were pending before the respondent ceased to exist) and the county government having already come into existence at the time the present suit was filed.

The claimants filed the grounds of opposition dated 9.09.2014. It was stated for the claimants that the preliminary objection raised facts which ought to be interrogated at the full hearing.

The court has considered the pleadings, the documents and submissions on record.

The claimants have pleaded at paragraph 3 of the memorandum of claim filed on 30.05.2013 that the claimants were retired between 1993 and 2007. The claimants are bound by that pleading and as submitted for the respondent, the claim was filed after lapsing of the statutory 6 years as provided in section 4 of the Limitation of Actions Act, for suits founded upon contract, and which applied before the enactment of the Employment Act, 2007.

During submissions, there was no dispute that the respondent did not exist at the time of filing the suit.

Accordingly, the preliminary objection will succeed on both grounds as submitted and urged for the respondent.

The court has considered that the respondent did not exist at the time of filing the suit and in the court's opinion it is just that the preliminary objection will succeed with no orders on costs.

In conclusion, the preliminary objection is allowed and the suit is dismissed with no orders on costs.

Signed, dated and delivered in court at Nyeri this Friday, 7th November, 2014.

BYRAM ONGAYA

JUDGE