



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 91 of 2012**

**KENYA PLANTATION & AGRICULTURAL WORKERS UNION.....CLAIMANT**

**VERSUS**

**MUNUNGA LEAF BASE.....RESPONDENT**

**RULING**

The Claimant, a former employee of the Respondent was dismissed from her employment on 20th March, 1997 following accusations of falsifying Green Leaf Tea kilogrammes received from farmers indicating that they had delivered more than the actual Green Leaf kilogrammes received.

She disputed her dismissal and contested the same through her Union.

By a letter dated 21st May, 1997 (Annexure 2) the Claimant's Union reported the dispute to the District Labour Officer Kirinyaga. A meeting was consequently called for 30th July, 1997 (Annexure 3). It is however unclear from the record and submissions, what became of the meeting. However the dispute was once again brought to the attention of the Minister by a letter dated 13th October, 1997 (Annexure 4). By a letter dated 15th September, 1998 the Ministry called for a meeting over the issue and a Mr. F. L. Okelo was to preside over the said meeting. Thereafter the Union through correspondence sought to know from the Chief Industrial Relations Officer, reaction to Mr. Okelo's request. The Union in the said correspondence expressed concern that the dispute had remained outstanding since 1997. according to the claimant's Union, the dispute remained outstanding until another investigator was appointed on 21st August, 2000. The newly appointed investigator released his report on 3rd June 2004 (Annex 9 of statement in reply to preliminary objection). The report made certain recommendation which according to the claimant, the Respondent refused to implement prompting the claimant to bring the matter to the court for determination.

The Respondent in opposing the suit averred as a preliminary objection that the claim was time barred having been commenced more than six years after the cause of action arose.

According to Mrs. Karanja the claim was filed on 25th January, 2012 while the cause of action arose on 20th March, 1997 when the claimant was terminated. Counsel relied on Section 4(1) of the Limitation of Actions act and Section 90 of the Employment Act.

According to Counsel, the contention that the delay was due to the matter pending for determination by the Minister is untenable as the Minister's decision was rendered on 3rd June, 2004 yet the claimant

waited for another seven years before commencing the suit.

According to Counsel, invitation goes to the jurisdiction of the court hence a key question. Counsel referred the Court to the case of Stephen Ndungu Kariuki Vs G4s Security Services, ICK Cause No. 1296 of 2010 where the court held that the claimant ought to have sought and obtained leave prior to the filing of the suit out of time. She urged the court to follow the decision and dismiss the claim.

Mr. Khaisha for the Respondent opposed the preliminary objection. He contended that the claimant was dismissed on 20th March, 1997 and a report of a formal dispute made on 21st May, 1997. A conciliation meeting was subsequently summoned by the Labour Officer but the Respondent failed to turn up. A formal complaint was therefore made to the Minister who appointed a conciliator but the conciliator delayed the dispute and only released his report on 3rd June, 2004.

According to Counsel, the Respondent refused to comply with the conciliator's recommendations prompting him to refer the matter to the court on behalf of his client. The dispute according to counsel was referred to court in accordance with repeated Trade Disputes Act.

Mr. Khaisha submitted that the Minister exercised his discretion under Section 4 (4) of the repeated Trade Disputes Act. He accepted the dispute and considered the detailed after which he appointed a conciliator. Counsel submitted that the discretion to admit a trade dispute or not was with the Minister and once that discretion is exercised, the court cannot relook at it. In support of this contention, counsel referred the Court to the cases of **Kenya Local Government Workers Union Vs. Kangundo Town Council ICK Cause Number 71 of 2009** and **Kenya Union of Journalists & Allied Workers Vs. British Broadcasting Corporation Monitoring East African Union ICK Cause Number 777 of 2011**.

Attempts to resolve this dispute through laid down mechanisms appeared to have had a rocky path. The disputed termination of the claimant's employment having taken place on 20th March, 1997, it took almost seven years to render a decision by the conciliator. Be that as it may, the respondent refused to oblige to the recommendations of the conciliator. This refusal by the respondent was acknowledged by the Claimant when the Union on her behalf wrote the letter dated 24th August, 2006 in which the Union asked the assistance of the Minister to have their counterparts sign the dispute form A to enable the Industrial court arbitrate the matter. Consequently the Claimant filed her claim through the Union on 9th July, 2012 which prompted the Respondent to question the competence of the suit considering that the termination of the Claimant's employment took place in 1997.

The question the court needs to determine is: when did the cause of action accrue? Was it on 20th March, 1997 when the claimant's services were terminated or was it at the point when it became apparently clear that the Respondent was not willing to honour the recommendations of the conciliator?

In order to answer this question the court takes into account the legal framework for resolving labour disputes as obtaining at the time the claimant was terminated.

Under Section 4(4) of the repeated Trade Disputes Act which was then applicable, any dispute involving termination of employment was to be reported to the Minister within twenty eight days of dismissal or termination. This dispute was reported to the Minister on 21st May, 1997 well beyond the prescribed twenty eight days prescribed under the repeated Trade Disputes Act. The Act however had a proviso that the Minister could where circumstances of a particular case warrant, accept the report of a trade dispute concerning a case of dismissal not so reported to him within 28 days.

In this particular case, the Minister admitted the dispute outside the prescribed twenty eight days presumably on the bases that the circumstances of the case warranted such admission. In any event the exercise of the Ministerial discretion is not the subject of the preliminary objection.

The Minister having admitted the dispute and appointed a conciliator, the pace and conclusion of such conciliation process was a matter beyond the exclusive control of the Claimant. What this means therefore is that the claimant having invoked the labour dispute resolution mechanism as provided under

the then Trade Dispute Act, the question of limitation does not arise. Resolution of labour and employments is a process with the Industrial Court in most case the final arbiter when other pre-courts mechanisms fail. What this means is that once a disputant involves the prescribed dispute resolution mechanism the accrued of the cause of action becomes suspended until the outcome of the conciliation process is rendered.

As was stated by my brother Justice Rika in the case of **Kenya Local Government Workers Union Vs Kangundo Town Council ICK Cause No. 71 of 2009**, unlike ordinary civil actions, trade disputes frequently involve multi-tiered disputes resolution mechanisms. Court action is just one of them and at times the last of the mechanism.

This court appreciates the important role played by the Law of Limitation. To illustrate, it is premised on the principle that over time evidence can be corrupted or disappear, memories fade, companies dispose of records. The best time to bring a law suit therefore is when the memories are still fresh and evidence intact. People want to get on with their lives and not have legal battles from their past come up unexpectedly.

In this particular case, the claimant was not in control of when the conciliator would complete his investigations and render his decision. All she could do which she did through her Union as exhibited by several correspondence attached to the memorandum of claim was to remind the conciliator to expedite the matter.

The determination together with recommendations was finally rendered on 3rd June, 2004. The Respondent refused to oblige to the recommendations prompting the Claimant to ask the Minister in 2006 to intervene in getting the Respondent to sign form A to enable the Industrial Court arbitrate the matter.

From the foregoing, the cause of action as it were accrued in 2006 when it became clear to the Claimant that the Respondent would not honour the conciliator's recommendations. Therefore by filing the claim on 9th July, 2012, the claimant was still within the six year rule prescribed under Section 4(1) of the Limitation of Action Act. To this extent the preliminary objection fails and is dismissed with costs.

It is so ordered.

Dated at Nyeri this 12th day of February, 2013.

**Abuodha J. N.**  
**Judge**

Delivered this 12th day of February, 2013.

**Delivered in open Court in the presence of M. Khisa for the Claimant and Mr. Kitimbi holding brief for Mr. Ogutu for the Respondent.**

**Abuodha J. N.**  
**Judge**