



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1711 OF 2011

(Before D.K.N. Marete)

KUDHEIHA WORKERSCLAIMANT

Versus

MOI GIATHUGU SECONDARY SCHOOLRESPONDENT

RULING

This matter was brought to court vide an undated memorandum filed in court by the claimant union on 6th October, 2011. The issue in dispute as therein expressed is,

‘Refusal by the Management to pay terminal dues to

- 1. Joseph Kagumba**
- 2. Joseph Wahogo’**

The respondent opted not to file a defence but chooses to defend the suit by way of a preliminary objection dated 7th November, 2011 and filed on the following day. It is set out as follows;

- a. The suit is statute barred for being filed more than twelve (12) years after the alleged cause of action.*
- b. The claim does not disclose any cause of action.*
- c. The claimant is retrospectively relying on laws enacted 13 years after the alleged cause of action.*
- d. The claim is a gross abuse of the court process.*

The matter came for hearing severally until the 19th June, 2013 when the parties proposed to dispose off the matter by way of submission on the preliminary objection with the court awarding the terms and timelines for the said submissions. These were had and the matter now awaits this ruling of court.

The respondent’s submission is that the suit is statute barred by reason of non-compliance with S.90, Employment Act, 2007. He further submits that it is not in dispute that the employment contract of the grievants now complained of was in June, 1992 and was filed on 6th November, 2011, nineteen (19) years down the line. This is offensive and too long to be considered

reasonable.

Secondly, this claim is defective as the same is not dated though duly signed and filed on 6th October, 2011. The net effect of this is that the pleading by the claimant is defective and should not be allowed to pass the test of validity.

It is my finding that even on the later ground of the claim being undated, this would term the same defective and make it lose efficacy. I would on this and the ground of limitation as is broadly thrashed above find that the claim untenable for being out of the limitation period of six years as established by S.6 of the Limitation of Actions Act, Chapter 22, Laws of Kenya.

I am therefore inclined to dismiss the case with costs to the respondent.

Dated, delivered and signed this 2nd day of October, 2013.

D.K.Njagi Marete

JUDGE

Appearances:

1. Mr. Mwangi instructed by the Union for the claimant.
2. Mr. Wanyaga instructed by Kinoti & Kibe Company Advocates for the respondent/applicant.