

REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 846 of 2009

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS, HOSPITALS AND ALLIED WORKERS CLAIMANT

VERSUS

NJABINI SECONDARY SCHOOLRESPONDENT

JUDGMENT

The claimant brought the claim on behalf of its member one Isaac M. Mwangi, the grievant. The Respondent is Njabini Secondary School represented by the Honourable Attorney General.

The grievant was employed in the service of the Respondent in 1970 as a Clerical Officer. On 22nd May, 1993, the grievant was interdicted on account of misusing the respondent's property, namely the school's welding machine to repair his personal vehicle. The interdiction subsisted up to 2nd July 1993 when the respondent's Board of Governors terminated the claimant's employment with effect from the 2nd July, 1993.

The dispute was reported to the Minister for Labour and Human Resources Development and an investigator appointed. The investigator's report was dated 6th June, 2003 and is annex 6 to the memorandum of claim.

The claimant filed the memorandum of claim on 12th April 2010. Counsel for the Respondent has submitted that the case is time barred in view of the provisions of Section 90 of the Employment Act, 2007. The Section provides that no civil action or proceedings based or arising out of the Act or contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

In this case the court finds that the cause of action accrued on 6th June, 2003 when the Minister's appointed investigator communicated his report. Three years prescribed in the Act lapsed on or about 6th June, 2006. The cause having been filed on 12th April, 2010, the court finds that it is time barred and it is dismissed with costs.

Signed, dated and delivered this 9th day of November, 2012.

**BYRAM ONGAYA
JUDGE**