



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 832(N) of 2009

KENYA SCIENTIFIC RESEARCH INTERNATIONAL

TECHNICAL AND ALLIED INSTITUTIONS WORKERS UNION.....APPLICANT

VS

MR. RAINALD SCHUMCHER’S.....1ST RESPONDENT

ZENZATIONAL HOLDINGS LTD.....2ND RESPONDENT

RULING

The application before court is a Preliminary Objection raised by the Applicants herein. The preliminary objection is in two-fold:

- (1) That the claim is time barred as the alleged cause of action arose in 2005 and the case was filed in 2009.
- (2) In respect of the 1st Respondent herein, the Respondents submit that the 2nd Respondent who are a Limited Liability Company and so the 2nd Respondent must be directly sued without enjoining the 1st Respondent.

The Respondent therefore prays that this court strikes out the enjoinder of the 1st Respondent in this matter.

I will first deal with the issue of Limitation. Under Section 4(1) of Cap. 22:

“4. (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued-

(a) actions founded on contract”;

However Section 90 of the Employment Act states that:

“Notwithstanding the provisions of section 4 (1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a 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”.

From this provision, the alleged dismissal having occurred about 2005, the Claimant ought to have filed

this claim by 2008. However there is evidence of the pre-trial procedures that were on going after 2005. Appendixes 1, 2, 3, 4 and 5 are evidence of such procedure. It is only on 11th December 2009 that these procedures seem to have been exhausted as under Appendix 6, the Conciliator appointed to conciliate this case officially declared the conciliation process a flop and advised the Claimant Union that the dispute had been unsolved after conciliation. The Claimant then proceeded and filed this claim on 21st December, 2009.

In view of the fact that conciliation process was on going, the limitation period could not run until the same had been exhausted.

I find for this reason that this claim is not time barred by dint of Section 90 of the Employment Act the same having been filed within one week from the time the Conciliation process ended.

On the second issue of enjoining the 1st Respondent, it is clear that by virtue of the Companies Law and the principle in Salmon Vs Salmon a company is different from the directors that form it. The directors cannot therefore be sued as the Claimant has done in this suit. I will therefore strike out the 1st Respondent from this suit and order the Claimant proceeds against the 2nd Respondent accordingly.

Dated, signed and delivered this 6th day of November, 2012.

HELLEN WASILWA

JUDGE

Appearances:

Martin Oduor for Claimant Union

No appearance for Respondent

Rachel Gichuki Court Clerk