



Nyabuti v Electricity Generating Company Plc (Kengen) (Cause E097 of 2025) [2025] KEELRC 2571 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2571 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E097 OF 2025
BOM MANANI, J
SEPTEMBER 25, 2025**

BETWEEN

DAVID MOGIRE NYABUTI CLAIMANT

AND

ELECTRICITY GENERATING COMPANY PLC (KENGEN) RESPONDENT

RULING

Background

1. The Claimant alleges that he was employed by the Respondent in the position of Craftsman 1 ICT Turkwel but the Respondent allegedly terminated this relationship by constructively dismissing him from employment. Consequently, he has instituted these proceedings to seek various reliefs as enumerated in the Memorandum of Claim dated 13th February 2025.
2. On being served with the Summons to Enter Appearance, the Respondent filed an application dated 25th March 2025 seeking to strike out the suit for allegedly being time barred. According to the Respondent, the Claimant's pleaded cause of action arose on 10th September 2018 when the employment relationship between the two was terminated. The Respondent contends that the suit was filed on 14th February 2025 more than six years after the employment relation between them had terminated. As such and by virtue of section 89 of the *Employment Act*, it avers that the suit is barred by limitation.
3. The Respondent's position is anchored on a letter of resignation which the Claimant tendered sometime in August 2018. The Respondent contends that it accepted the said resignation and informed the Claimant that his last day of work was 10th September 2018. As such, it contends that based on these correspondence, the employment relation between the parties closed on 10th September 2018.



4. The Claimant contests the Respondent's position. He avers that his letter of 24th July 2018 was misconstrued by the Respondent.
5. According to the Claimant, the letter communicated his decision to resign from his trade union position. He denies that it was meant to communicate a decision to resign from employment. As such, he contests the Respondent's contention that his contract of service was terminated on 10th September 2018.
6. From the foregoing, it is apparent that the date when the Claimant's contract of service was terminated is contested. There is no agreement that the contract was closed on 10th September 2018 through resignation. As such, the court is not able, at this preliminary stage of the dispute, to determine whether the contract closed on 10th September 2018 as contended by the Respondent and whether the suit is thus time barred. This is an issue that can only be determined after full trial of the case.

Determination

7. The upshot is that the court declines the Respondent's application dated 25th March 2025 and orders that the question whether the suit is time barred shall be determined after ascertainment of the date when the contract of service between the parties was closed based on the evidence which they will tender at the trial.
8. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 25TH SEPTEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

