



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Kipanga & 21 others v TSS Grain Millers Ltd & 2 others (Cause E138 of 2023) [2024] KEELRC 1922 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1922 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E138 OF 2023**

**AK NZEI, J
JULY 25, 2024**

BETWEEN

AMRAN ALI KIPANGA & 21 OTHERS & 21 OTHERS & 21 OTHERS & 21 OTHERS & 21 OTHERS CLAIMANT

AND

TSS GRAIN MILLERS LTD & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS RESPONDENT

RULING

1. The application before me is the Applicants' *ex-parte* Chamber Summons dated 6th February 2024. The Applicants seek the following orders:-
 - a. That the Court be pleased to grant leave to the Applicants to file suit against the Respondents out of time.
 - b. That the annexed suit be deemed to have been properly filed and ripe for service upon the Respondents.
 - c. That costs of application be in the cause.
2. The application is predicated on a supporting affidavit of Owino Oenga Advocate sworn on 6th February 2024. It is deponed in the said affidavit:-
 - a. that the Applicants were in 2016 declared redundant by the 1st Respondent in a manner that was inconsistent with Section 40 of the *Employment Act* 2007, and that a suit filed by the Applicants' Trade Union, being Mombasa ELRC Cause No. 463 of 2016, was struck off for failure to exhaust the conciliation process and for want of statutory compliance with particular provisions of the Insolvency Act.



- b. that statutory compliance was obtained vide a Ruling delivered by the High Court at Mombasa on 2nd December 2020 in Misc. Cause No. 262 of 2019 (Bakery Confectionery Manufacturing & Allied Workers Union [K] -vs TSS Grain Millers Limited.
 - c. that the Applicants honestly believed that their Union was in conduct of their matter, but recently realized that the Union was no longer pursuing the matter.
 - d. that the Applicants have not received their terminal dues and the 1st Respondent company has already been sold to the 2nd Respondent company, and unless the Court urgently intervenes, the Applicants stand to lose their rightful terminal dues despite having worked diligently for the 1st Respondent.
3. The application is unopposed; and the single issue for determination is whether this Court is vested with jurisdiction to extend time for filing suits/claims arising from contracts of service or based on the [Employment Act](#).
 4. The Supreme Court of Kenya stated as follows in the case of *Samuel Kamau Macharia -VS- KCB & others* [2012] eKLR:-

“A Court’s jurisdiction flows from either [the Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction conferred by [the Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
 5. Section 89 (formerly Section 90) of the [Employment Act](#) states as follows:-

“Notwithstanding the provisions of Section 4(1) of the [Limitation of Actions Act](#), (Cap 22), 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.”
 6. It is clear from the foregoing statutory provision that the limitation period of three years provided for by the afore-cited law is absolute, and that once it lapses on any cause of action to which the [Act](#) applies, the door to seeking redress regarding that cause of action is permanently shut.
 7. The Court of Appeal stated as follows in the case of [Beatrice Kaliai Adagala – Postal Corporation of Kenya](#) [2015] eKLR:-

“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the [Employment Act](#), which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years.

As this Court stated in the case of *Divecon Limited -vs- Samani* [1995-1998] EA P. 48, a decision relied upon by Radido, J in *Josephat Ndirangu -vs- Henkel Chemicals [E.A] Limited* [2014] eKLR, the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the Applicant satisfies the requirements of Sections 27 and 28 of the [Limitation of Actions Act](#).”
 8. In view of all the foregoing, I return a finding that this Court is not seized of jurisdiction to grant the orders sought by the Applicants. Consequently, the Chamber Summons application dated 6th February 2024 is without merit, and is hereby dismissed with no order as to costs.



9. For avoidance of doubt, the suit documents filed herein alongside the application are hereby struck off, and the Court file herein is hereby ordered closed.

10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 25TH JULY 2024

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Claimant

.....Respondent

