



**Maina v Mocam Security Services Limited (Employment and Labour Relations Cause 644 of 2020) [2024] KEELRC 2117 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2117 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 644 OF 2020**

**MN NDUMA, J**

**JULY 25, 2024**

**BETWEEN**

**JAPHET O MAINA ..... CLAIMANT**

**AND**

**MOCAM SECURITY SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. The respondent filed a preliminary objection to wit that the claim is statute barred by dint of the provisions of section 90 of the Employment Act 2007.
2. The suit was filed vide a memorandum of claim on 10<sup>th</sup> October 2020.
3. The memorandum of claim discloses the cause of action arose on or about the 27<sup>th</sup> August 2017 when the respondent terminated the employment of the claimant. That the termination was verbal in that the claimant was told to go home and would be recalled but that did not happen.
4. The claimant seeks maximum compensation for unlawful termination of employment. Further the claimant seeks payment of two months' salary in lieu of notice, payment in lieu of leave days not paid, refund of bus fare and underpayment for the month of October 2015 to August 2017. The total claim is for a sum of Kshs. 302,244/=.
5. In terms of the letter of demand by advocates of the claimant to the respondent dated 24/3/2020, the date of termination is stated to be August 2017, that notwithstanding, the claimant and/or his advocates did not file suit until the 10<sup>th</sup> October 2020 which is about two months after expiry of three (3) years from the date of alleged termination.
6. The Court of Appeal and this Court in various cases including Beatrice Kabai Adagala v Postal Corporation of Kenya (2015) eKLR and Devecon Limited v Samani 1995-1998 as well as in Josephat Ndirangu v Henkel Chemicals Limited 2013 eKLR strictly applied the limitation of three (3) years



on all suits founded on contract of employment by dint of section 90 of the [Employment Act](#), 2007, which reads: -

“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.”

7. The courts have also found that the period within which a suit based on employment contract is filed may not be extended in terms of the [Limitation of Actions Act](#) Cap 22 Laws of Kenya.
8. The hands of the court are tied in this respect since this is a jurisdictional issue that deprives the court of the authority to hear and determine a suit founded on employment contract after expiry of three years regardless whether the period has lapsed by a few days, months or less than a year.
9. Accordingly, the preliminary objection has merit and is upheld by the court. The suit is struck out with no order as to costs for violating the statute bar aforesaid.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

Mr. Mbeche for claimant

Mr. Kiprono for respondent

Mr. Kemboi Court Assistant

