



**Ndungu v Farmer's Choice Limited (Cause E252 of 2023)  
[2024] KEELRC 1762 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1762 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E252 OF 2023  
BOM MANANI, J  
JULY 11, 2024**

**BETWEEN**

**DAVID KARIUKI NDUNGU ..... CLAIMANT**

**AND**

**FARMER'S CHOICE LIMITED ..... RESPONDENT**

**RULING**

**Background**

1. The parties to this action had an employment relation which was terminated through the Respondent's letter to the Claimant dated 22<sup>nd</sup> January 2016. The record shows that the Claimant did not challenge the Respondent's decision to terminate his services until 28<sup>th</sup> March 2023 when he instituted these proceedings.
2. The Claimant contends that he did not file suit to challenge the Respondent's decision earlier because he was still facing a criminal charge of stealing by servant which was concluded in his favour on 29<sup>th</sup> March 2022, approximately seven (7) years since his contract was terminated. According to him, the only time he could institute the instant proceedings was after he was cleared of the criminal charge.
3. The Respondent has raised an objection to the competence of the suit on account of section 90 of the *Employment Act*. According to it (the Respondent), the suit is barred by limitation of actions.

**Analysis**

4. The parties agree that the Claimant's contract of service was terminated on 22<sup>nd</sup> January 2016. They also agree that the suit to challenge the validity of the decision to terminate the contract was instituted in March 2023.



5. Section 90 of the *Employment Act* provides 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. From the foregoing, it is clear to me that a suit based on a contract of service ought to be filed within three years of the cause of action arising or within twelve months of cessation of an injury in the case of a continuing injury claim. Any suit that is filed outside these timelines is barred by limitation of actions.

7. A cause of action is the event that gives one the right to seek legal redress. This fact is made clear in *Kenneth Kibimiru Kigalo v Mastermind Tobacco (K) Limited & another* [2020] eKLR where the court observed as follows:-

“A cause of action is an act or omission on the part of a defendant that gives right of an aggrieved person to seek remedy in court against another person and it arises from the moment the aggrieved person becomes entitled to seek remedy in court.”

8. In a suit challenging an employer’s decision to terminate a contract of service, the cause of action is premised on the decision to terminate the contract. Therefore, the aggrieved employee must file suit within three years of such decision or within twelve months thereof in the event of claims relating to continuing injury disputes.

9. In the instant case, the Claimant did not present his suit within three years of termination of his contract. Instead, he filed suit after the lapse of seven years.

10. The Claimant’s contention is that he was awaiting conclusion of the criminal case against him before he could approach the court to challenge his dismissal from employment. This was an erroneous decision.

11. Time for filing suit began to run from the date the Respondent terminated the Claimant’s services on 22<sup>nd</sup> January 2016. It did not start to run from the day he was cleared of the criminal charge. As such, this suit is time barred.

12. The Claimant has sought to christen the criminal case against him as a “continuing injury” within the meaning of section 90 of the *Employment Act*. This is a misconception of the law on the subject. A continuing injury is a violation which has its origins in the contract of service.

13. The decision to charge the Claimant with a criminal offense was by the police and not the Respondent. As such, it cannot be construed as a violation which arose from execution of the contract between the Claimant and the Respondent. In any event, the Claimant’s suit is premised on the Respondent’s decision to terminate his contract which was rendered on 22<sup>nd</sup> January 2016 and not the decision to terminate the criminal charge against him which was rendered in March 2022.

### **Determination**

14. The upshot is that the preliminary objection raised by the Respondent is merited.

15. The court finds that the instant suit is time barred.

16. As such, it is struck out with costs to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 11<sup>TH</sup> DAY OF JULY, 2024**



**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> 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**

**JUDGE**

