



**Rangili v East Africa Elevator Company Limited (Employment and Labour Relations Cause E115 of 2021) [2024] KEELRC 1710 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1710 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E115 OF 2021**

**MN NDUMA, J**

**JULY 4, 2024**

**BETWEEN**

**PETER OGUTU RANGILI ..... CLAIMANT**

**AND**

**EAST AFRICA ELEVATOR COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The respondent filed a notice of preliminary objection to the suit filed vide a memorandum of claim dated 12<sup>th</sup> February 2020 and filed on 13<sup>th</sup> February 2021 as follows:
  - a. The suit is statute barred having been commenced outside of the time prescribed under section 90 of the *Employment Act*, 2007.
  - b. The suit has abated as summons have been taken after more than 2 years and 6 months from the date of filing suit in violation of the mandatory provisions of Order 5 Rule 1(2) (5) and (6) of *Civil Procedure Rules 2010*.
  - c. In the alternative and without prejudice to the above, the suit has abated for want of prosecution pursuant to Order 17 Rule 2(5) of the *Civil Procedure Rules 2010*.
2. The court has perused the memorandum of claim filed on 15/2/2021 and the cause of action is pleaded to have occurred on 11/10/2019 when the employment of the claimant by the respondent was terminated.
3. The claimant seeks the following reliefs:-
  - i. Notice pay Kshs 24,000/=
  - ii. Unpaid accrued leave for 3 years Kshs 50,400/=
  - iii. Accrued overtime Kshs 210,000/=



- iv. Unpaid public holidays Kshs 48,000/=
  - v. Compensation for the unlawful termination
  - vi. Grant of certificate of service
  - vii. Costs and interests
4. From the outset, the court finds that the suit having been filed on 15<sup>th</sup> February 2021, was not time barred because this was done before the three year period prescribed under section 90 of the Employment Act, 2007 had lapsed.
  5. This objection lacks merit and is dismissed.
  6. Order 5 rule 1 provides: -
    - (1) When a suit has been filed summons shall issue to the defendant ordering him to appear within the time specified therein.
    - (2) Every summons shall be signed by the judge or an officer appointed by the judge and shall be sealed with the seal of the court without delay, and in any event not more than thirty days from the date of filing suit(s).”
  7. In the present matter, no summons were taken out for signing by a judge or an officer of the court for service to the defendant at all.
  8. More than three years have lapsed since the suit was filed on 15<sup>th</sup> February 2021 by the claimant and no application for an order to extend the validity of summons in terms of Order 5 rule 2(2) has been filed by the claimant.
  9. The respondent has now moved for the dismissal of the suit on grounds of abatement.
  10. Order 5 rule 2(7) provides: -

“Where no application has been made under sub-rule (2) the court may without notice dismiss the suit at the expiry of twenty-four months from the issue of the original summons.”
  11. In the present case there is no evidence to show that original summons were issued at all by the claimant.
  12. Accordingly, the suit is dismissed for non-prosecution and abatement with no order as to costs

**DATED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY, 2024**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

Mr. Mutinda for claimant

Mr. Manyasi for respondent

Mr. Kemboi Court Assistant

