



**Gontier v Acacia Medical Centre Limited (Employment and Labour Relations Cause E594 of 2022) [2024] KEELRC 2282 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2282 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E594 OF 2022  
BOM MANANI, J  
SEPTEMBER 26, 2024**

**BETWEEN**  
**DR MAJOR CHRISTOPHER STUART GONTIER ..... CLAIMANT**  
**AND**  
**ACACIA MEDICAL CENTRE LIMITED ..... RESPONDENT**

**RULING**

**Background**

1. This is a claim for salary arrears allegedly owed to the Claimant by the Respondent. The Claimant contends that between 1<sup>st</sup> February 2012 and the date of instituting suit, the Respondent failed to remit to him the sum of Ksh. 3,534,000.00 in salary arrears.
2. The record does not show that the Respondent has filed a defence to the action. However, it has filed an objection to the suit on account of limitation of actions.
3. According to the Respondent, the cause of action in the suit arose on 1<sup>st</sup> February 2012 when the amount in dispute allegedly accrued. As such and in terms of section 90 of the *Employment Act*, the Claimant ought to have instituted suit to enforce recovery of the amount within three years from 1<sup>st</sup> February 2012. Therefore, the instant suit having been filed in 2022 is untenable for contravening the aforesaid provision of statute.
4. In response, the Claimant denies that the cause of action in the suit accrued on 1<sup>st</sup> February 2012. According to him, the amount in dispute only began accumulating in February 2012 and continued to rise until February 2022.
5. The Claimant contends that in October 2021, the Respondent expressed reservations about settling what had accumulated by that time. As such, the cause of action is deemed to have crystallized around that time.



6. Section 89 of the *Employment Act* (previously section 90) 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.”

7. The above provision bears two implications:-

- a. First, it outlaws the application of section 4(1) of the *Limitation of Actions Act* in determining limitation of actions for employment disputes.
- b. Second, with the exception of continuing injury claims which must be instituted within twelve (12) months of cessation of the injury, the provision prohibits institution of employment claims outside three (3) years from the date of accrual of the cause of action.

8. Therefore, it is apparent that the critical consideration in determining limitation of actions in continuing injury claims is not the time the injury allegedly commenced. Rather, it is whether the claim to redress the injury was instituted within twelve (12) months of its cessation.

9. This point has been made in a series of decisions by this court. For instance, in *Cotec Security Group Ltd (Formerly Known as Bedrock Holdings Ltd) v Kenya National Private Security Workers Union (Appeal E023 of 2023)* [2024] KEELRC 610 (KLR) (19 March 2024) (Judgment), the court observed as follows on the issue:-

“The import of this section is that any claim based on a continuing injury must be brought within 12 months of cessation of the violation.”

10. What constitutes a continuing injury claim in the context of an employment relation was considered by the Court of Appeal in the case of *The German School Society & another v Obany & another (Civil Appeal 325 & 342 of 2018)* (Consolidated) [2023] KECA 894 (KLR) (24 July 2023) (Judgment). The court suggested that claims for back pay fall within this category. It observed as follows on the subject:-

“Normally, a belated service related claim will be rejected on the ground of delay and laches or limitation. One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. Borrowing from the excerpts reproduced above and considering that the respondent continued to work under the same circumstances, we find and hold that the breach complained of was of a continuing nature, capable of giving rise to a legal injury which assumes the nature of a continuing wrong. It follows that the appellant’s argument that the claims were time barred fails. On the contrary, the said claims fall within the ambit of a continuing wrongs contemplated under section 90.”

11. From the preliminary information on record, I do not understand the Claimant as contending that all the amount claimed in the suit accrued on or before 1<sup>st</sup> February 2012. I understand him as saying that the amounts begun building up from 1<sup>st</sup> February 2012 and continued to rise until February 2022. This fact is apparent from the witness statement which he filed together with the Statement of Claim.



12. Undoubtedly, the Statement of Claim could have been crafted in a much better way in order to capture all these facts instead of confining them to the witness statement. However, the court cannot overlook the fact that the Claimant has explained that the sum of Ksh. 3,534,000 begun accumulating in February 2012 and continued to rise until February 2022 when it was last adjusted upwards.
13. The record shows that the instant suit was filed on 22<sup>nd</sup> August 2022, approximately six (6) months from February 2022, the last day when the amount claimed was adjusted upwards. As such, the suit being one of a continuing injury, was instituted within twelve (12) months from the date the injury complained of was last inflicted. It is therefore not time barred.

#### **Determination**

14. The upshot is that the instant suit is not barred by limitation of actions. As such, the preliminary objection by the Respondent is unmerited.
15. Accordingly, the objection is dismissed with costs to the Claimant.

**DATED, SIGNED AND DELIVERED ON THE 26<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent/Applicant

#### **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.

