



Mbthi v Pride Inn Hotels & Investment Limited & another (Cause E028 of 2025) [2025] KEELRC 2675 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2675 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E028 OF 2025
M MBARŪ, J
OCTOBER 2, 2025

BETWEEN

ROBERT MBTHI CLAIMANT

AND

PRIDE INN HOTELS & INVESTMENT LIMITED 1ST RESPONDENT

PRIDE INN AZURE LIMITED 2ND RESPONDENT

RULING

- 1 The ruling herein relates to a Notice of Preliminary Objections dated 27 March 2025, filed by the respondents, Pride Inn Hotels & Investment Limited and Pride Inn Azure Limited on the grounds that;
 1. The claim is time-barred.
 2. The claim is bad in law and fatally defective.
- 2 The respondents submitted that the claim is based on the fact that the termination of employment was illegal and unfair. The claimant was earning Ksh. 82,000 and is thus claiming notice pay and compensation.
- 3 The claimant avers that he worked for the respondents from 13 March 2017 until 30 September 2021. However, he filed the claim on 18 March 2025 out of time and contrary to section 89 of the *Employment Act* (the Act). The law requires that an employment claim based on alleged unfair termination of employment should be filed within 3 years from the date the cause of action arose.
- 4 In the case of *John Kiiri Njiri v University of Nairobi* [2021] eKLR, the court held that a claim based on a contract of employment should be filed within 3 years. This claim is time-barred and incurably defective and should be dismissed with costs.



- 5 The claimant submitted that he was employed on 13 March 2017 as a night manager at a wage of KSh. 82,000 per month. He was issued a retirement notice on 30 September 2020. Due to illegal termination of employment, he wrote a letter dated 15 March 2021 demanding revocation of the retirement notice dated 7 September 2020 and reinstatement into employment, or, in the alternative, payment of his terminal benefits for the remaining 9 years.
- 6 On 1 July 2021, the claimant wrote another demand notice to the respondents, and on 10 July 2021, there was a meeting at the office, but no fruitful negotiations took place. Termination of employment was unlawful and unfair, and the claim should be heard on the merits.

Determination

- 7 A preliminary objection is allowed at any stage of a suit. The threshold to be met is endorsed in the principle in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors* [1969] EA; *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others*, Petition No. 10 of 2013, [2014] eKLR that;

... a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. ...
- 8 In this case, the claimant, as stated in paragraph (7) of the Memorandum of Claim, asserts that the respondents employed him from 13 March 2017 until he received a retirement notice terminating his employment on 30 September 2020.
- 9 The claimant also asserts that he engaged the respondents to negotiate over the matter, seeking reinstatement and payment of his terminal dues.
- 10 Based on the given facts, the last day on the shop floor was September 30, 2020.
- 11 Under section 90 of the Act, the claimant should have filed the claim within 3 years from the date the cause of action accrued.
- 12 Section 90 of the *Employment Act*, 2007 provides that;

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.
- 13 Section 90 of the *Employment Act*, 2007 has now amended the *Limitation of Actions Act* to specifically provide for a limitation period of three years in actions based on breach of contract of service or arising out of the Act.

this Court neither has the statutory jurisdiction nor discretion to grant leave or extend time in causes of action based on breach of contract of service or actions arising out of the Act. This is aptly summed



up by the Court of Appeal in the case of Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR that;

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* 2007 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] 1 EA P.48, ... in Josephat Ndirangu - vs – Henkel Chemicals (EA) Limited, [2013] 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*.

- 14 From 30 September 2020, the claimant had 3 years to file his claim. Filing it on 18 March 2025 is out of time, which denies the court the requisite jurisdiction to hear the matter and must therefore do so.
- 15 Accordingly, the objections dated 27 March 2025 are with merit. The suit is hereby struck out. Costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 2ND DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

