



**Oyugi v Tourism Promotion Services Limited (Cause E047 of 2025)  
[2025] KEELRC 2811 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2811 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E047 OF 2025  
M MBARŪ, J  
OCTOBER 16, 2025**

**BETWEEN**

**JOSHUA ODHIAMBO OYUGI ..... CLAIMANT**

**AND**

**TOURISM PROMOTION SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. The ruling herein relates to a Notice of Preliminary Objections filed by the respondent, Tourism Promotion Services Limited, on 12 May 2025, on the grounds that the claim herein is time-barred and contrary to section 90 of the *Employment Act*.
2. Both parties attended court on 14 July 2025 and were directed to address the objections. Only the respondent as the applicant complied. The claimant opted to file an application dated 9 September 2025, which is pending.
3. The respondent submitted that on 17 April 2025, the claimant filed his claim seeking payment of terminal dues. The respondent filed a conditional appearance and Notice of Preliminary Objections as the use is time-barred.
4. Under paragraph 2.2 of the claim, the claimant asserts that his employment was terminated in 2021. To file the claim in 2025 is outside the limitation period under section 90 of the *Employment Act* (the Act), and the respondent is allowed under the principles in *Mukisa Biscuit Manufacturing Ltd v West End Distributors* [1969] EA to raise objections on a question of law based on the pleadings filed and served.
5. In the case of *Katana v Kwale Water and Sewerage Company Limited Appeal E124 of 2023*, the court held that a claim filed outside the three years contemplated under section 90 of the Act cannot be sustained. The court lacks jurisdiction to hear such a matter. This position is reinstated in *Michira & 41 others v Aegis Kenya Ltd t/a Leopard Beach Hotel, Cause No. E088 of 2023*; *Njunge v Muasya Appeal E040 of 2023*, and *Thuri v Equity Bank Limited Cause E127 of 2023*.



6. Based on the claim filed by the claimant, the claim is time-barred under the mandatory provisions of section 90 of the Act and should be dismissed with costs.

There is no response by the claimant as set out above.

### **Determination**

7. Indeed, a party is allowed to raise a preliminary objection on purely legal points. In the case of *Erad Suppliers & General Contractors Limited v National Cereals & Produce Board* [2012] KESC 6 (KLR), the Supreme Court of Kenya held that where objections are raised concerning jurisdiction, the court must address the matter first before proceeding on any other issue. These are the principles discussed at the *Mukisa Biscuit* case, cited above.
8. Instead of the claimant making submissions to the objections on the legal issue under section 90 of the Act, he filed an application seeking to amend pleadings.
9. On the one hand, the respondent has raised a pure point of law, and on the other hand, the claimant fails to reply and pts to file an application seeking to amend his pleadings.
10. Whereas the court rules allow a party to amend their pleadings before closure and hearing directions are taken, seized of a preliminary objection, directed by the court to file submissions, the claimant should have taken the moment to address accordingly. Circumventing the objections filed through a secondary action of an application to amend pleadings instead is not an orderly way of doing court business.
11. The pleadings filed stand as they are. The claimant, as stated in paragraph 2.2 of the Memorandum of Claim, asserts that his employment terminated in April 2020. That his employment was unprocedurally terminated by the respondent.
12. Under paragraph 2.9, the claimant asserts that he reported back to work in 2021 after COVID-19 rules and regulations were lifted, but the respondent sent him away.
13. According to the given facts, the claim was last at the shop floor in 2021, although the claimant states that employment was terminated in April 2020.
14. The claim was filed on 17 April 2025. Taking the last date of 2021, he should have filed his claim on or before 31 December 2024.
15. The reliefs sought under the Memorandum of Claim relate to notice pay, unpaid house allowances, unpaid service charges, unpaid leave days and compensation for unlawful termination of employment. These are claims regulated under section 90 of the Act as either continuing injuries or damages.
16. Under section 90 of the Act, the provisions thereof are mandatory. A claim based on an employment injury must be filed within three years, and a continuing injury within twelve months.
17. The facts as set out in the Memorandum of Claim, employment having terminated in April 2020, the claimant having been last at the shop floor in 2021, the same is time-barred, and the court lacks jurisdiction to proceed further.
18. Objections dated 12 May 2025 are with merit. The claim is hereby struck out. Costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 16<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. MBARŪ**

**JUDGE**



In the presence of:

Court Assistant: Japhet

..... and .....

