



Sirma & another v National Industrial Training Authority & another (Employment and Labour Relations Cause E444 of 2024) [2025] KEELRC 2730 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2730 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E444 OF 2024
SC RUTTO, J
OCTOBER 3, 2025**

BETWEEN

DAVID KIBET SIRMA 1ST CLAIMANT

BENJAMIN LOKOR LORUNYEI 2ND CLAIMANT

AND

NATIONAL INDUSTRIAL TRAINING AUTHORITY 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

RULING

1. Before this Court for determination is the Respondent’s Notice of Preliminary Objection dated 5th August 2024. The objection is premised on the ground that the Claim herein is statute-barred and offends the mandatory provisions of Section 90 (sic) of the *Employment Act*, 2007.

Submissions

2. The Preliminary Objection was canvassed by way of written submissions. Only the Respondents complied. I say so, seeing that the Claimants’ submissions are not traceable on the Court’s physical record and the online portal.
3. The Court has given due consideration to the submissions by the Respondents.

Analysis and Determination

4. To my mind, the singular issue for determination is whether the suit herein is time-barred.
5. Submitting in support of the preliminary objection, the 1st Respondent contends that the suit herein was filed outside the three-year limitation period prescribed under the *Employment Act*.



6. Pursuant to Section 89 of the *Employment Act*, a suit founded on a contract of service as the one herein cannot be sustained in Court after the lapse of three years from the date the cause of action occurred.
7. A cause of action refers to a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. Where the dispute revolves around termination of employment, a cause of action typically arises when the employee is officially notified of their termination.
8. Addressing this issue, the Court of Appeal in the case of Attorney General & another v Andrew Maina Githinji [2016] eKLR, had this to say:

“The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October, 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not...having found that the cause of action arose on 2nd February, 2010 and that the claim was filed on 16th June, 2014 it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was barred as at 1st February, 2013, and I so hold.”

9. As can be discerned from the record, the Claimants were terminated from employment with effect from 22nd December 2017. It is therefore apparent that the cause of action arose on the said 22nd December 2017 when the Claimants were notified of their termination from employment.
10. Indeed, as of 22nd December 2017, the Claimants had a clear cause of action against the Respondents as they had all the facts they required to institute legal proceedings for unfair termination from employment. In essence, the cause of action had crystallized.
11. Applying the provisions of Section 89 of the *Employment Act* to the case herein, it follows that the time for filing the instant suit started running from 22nd December 2017 and lapsed on 22nd December 2020 or thereabout. Thereafter, no action based on the contract of employment could be sustained.
12. In this case, the Claimants filed the Claim herein on 12th June 2024, nearly four years outside the statutory period. It is therefore clear that the claim was filed well beyond the limitation period. Therefore, it goes without saying that as of 12th June 2024, when the Statement of Claim was filed, it was statute-barred.
13. It must also be appreciated that Section 89, aforementioned, is couched in mandatory terms and the limitation period is not subject to extension.
14. The Court concurs with and is bound by the sentiments of the Court of Appeal in the case of Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR, where it was expressed thus:

“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.” Underlined for emphasis
15. It is trite law, as stated in Thuranira Karauri v Agnes Ncheche [1997] eKLR, that limitation goes to jurisdiction. As such, a claim filed outside the limitation period strips the Court of jurisdiction to entertain it.



16. Accordingly, the Preliminary Objection dated 5th August 2024 is upheld with the consequence that the Claim filed on 12th June 2024 is struck out for being time-barred.
17. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimants In person

Ms. Mochoge for the 1st Respondent

Ms. Mochoge instructed by Ms. Iseme for the 2nd Respondent

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

