

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT KERICHO**

**ELRC PETITION NO. E010 OF 2025**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**JOSEPH KIPKOECH CHERUIYOT.....**  
**PETITIONER**

**VERSUS**

**KABIANGA TEA FARM COMPANY LIMITED.....1<sup>ST</sup>**  
**RESPONDENT**

**THE GOVERNOR, KERICHO COUNTY**  
**GOVERNMENT ..... 2<sup>ND</sup>**  
**RESPONDENT**

**COUNTY GOVERNMENT OF KERICHO..... 3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

**Introduction**

1. The Respondents herein filed a Preliminary Objection dated 17<sup>th</sup> July 2025 seeking the following grounds that:

- 1. The Petitioner's cause of action is statutorily time barred by virtue of the provisions of section 90 of the Employment Act, 2007.*

*2. The Petitioner's application offends the doctrine of exhaustion as espoused under Section 6 of the Civil Procedure Act since the matter at hand ought to have been brought before the County Public Service*

*Commission as stipulated under Section 77 of the County Government Act. The Petitioner ought to have exhausted the dispute resolution mechanisms provided by the aforementioned Acts, before bringing the Application to the Court.*

*3. The present application is fatally defective, incompetent and an abuse of the Court process and should be dismissed with costs to the Respondents.*

*4. The suit is scandalous, frivolous and vexatious, out rightly ripe for striking out as advanced by Order 2 Rule 15 of the Civil Procedure Rules.*

*5. By dint of this motion in limine, any further proceedings in this matter ought to be held in abeyance pending the hearing and determination of this preliminary objection.*

2. Parties canvassed the Preliminary Objection by way of written submissions.

### **Respondents' submissions**

3. The Respondents submitted that the Petitioner/Applicant's application should be struck out under **Order 2 Rule 15(1)(b) and (d) of the Civil Procedure Rules** for being frivolous, vexatious, and an abuse of the court process, given that his dismissal was lawful and based on gross misconduct. The Respondent also submitted that the application is also statutorily time-barred under **Section 90 of the Employment Act**, having been filed over eleven years after the dismissal, far beyond the three-year limitation period. The Respondent relied on the case of **James Mugeru Igati v Public Service Commission of Kenya [2014] KEELRC 735 (KLR)**, which held that the cause of action accrues at the date of termination, and **Hilarion Mwabolo V Kenya Commercial Bank [2013] KEELRC 932 (KLR)**, which emphasized that claims filed outside the statutory period are incurably defective.

4. Furthermore, the Respondent submitted that the Petitioner/Applicant failed to exhaust the dispute

resolution mechanisms under **Section 77 of the County Governments Act** and **Section 6 of the Civil Procedure Act**, which mandate initial recourse to the Public Service Commission. The principle of exhaustion was affirmed in **Speaker of the National Assembly V Karume [1992] KECA 42 (KLR)**, where the Court of Appeal underscored the necessity of following prescribed statutory procedures.

5. Consequently, the Respondents submitted that the application is not only time-barred and procedurally premature but also fatally defective and should be dismissed with costs.

### **Petitioner submissions**

6. The Petitioner argues that the Respondents' preliminary objection lacks a valid point of law set out in the case of **Mukisa Biscuits V West End Distributors [1969] EA 696** and misapplies **Section 90 of the Employment Act** on limitation. The Petitioner also relied on the case of **Monica Wangu Wamwere & 5 others V Attorney General (Petition 26, 34 & 35 of 2019 (Consolidated) [2023] KESC 3 (KLR)**, where the Supreme Court held

that constitutional rights violations are not time-barred under the Limitation of Actions Act (Cap 22).

7. The Petitioner submitted that the cause of action only arose on 15<sup>th</sup> July 2022 when termination details were disclosed. Additionally, the doctrine of exhaustion is inapplicable since Kabianga Tea Farm was a private company at the time of termination, governed by principles in ***Salomon V Salomon [1897] AC 22*** and ***Victor Mabachi & Another V Nurtun Bates Limited [2013] KECA 204 (KLR)***, making Section 77 of the County Governments Act irrelevant.
8. The Petitioner contends that his summary dismissal by the 1<sup>st</sup> Respondent violated constitutional and statutory protections on fair labour practices and administrative justice. The Petitioner submitted that he was not afforded a fair hearing or asked to show cause, and the reasons for his termination were only provided years later in 2022, despite his dismissal occurring on 16<sup>th</sup> December 2013. The Petitioner cited ***section 41 of the Employment Act***, which mandates that an employer must hear and consider an employee's representations before termination, while section 44 outlines the conditions under which

summary dismissal may occur, emphasizing the need for valid grounds and appropriate notice. The Court of Appeal in ***Pius Machafu Isindu V Lavington Security Guards Limited [2017] KECA 225 (KLR)*** affirmed that employers bear the burden of proving valid, fair, and justified reasons for dismissal, and must follow the elaborate procedures set out in the Act, particularly section 41. Additionally, the Fair Administrative Action Act, 2015, requires prior and adequate notice of proposed administrative action and disclosure of the evidence to be relied upon, further underscoring the procedural breaches in the Petitioner's dismissal.

9. The Petitioner submitted that his summary dismissal by the 1<sup>st</sup> Respondent violated multiple statutory and constitutional safeguards, including ***sections 41, 43, 44, 45, and 49 of the Employment Act, 2007***, which mandate procedural fairness, valid grounds for dismissal, and appropriate remedies. The dismissal occurred without a notice to show cause, a fair hearing, or disclosure of specific allegations, contravening ***Article 47 and Article 50 of the Constitution***, as well as ***section 4 of the Fair Administrative Action Act, 2015***.

10. In ***Abdulahi Mohammed Omar v Energy***

***Regulatory Commission***

**[2020] KEELRC 312 (KLR)** affirmed that failure to provide a fair hearing and valid reasons breaches constitutional rights. The Petitioner submitted that he was forcibly evicted from company housing, undermining his dignity under **Article 28 of the Constitution** and **Article 1 of the Universal Declaration of Human Rights**, and suffered financial ruin, academic disruption, and reputational damage due to politically motivated interference, violating Article 27 on equality and non-discrimination. Under **Articles 22 and 23(3) of the Constitution**, and guided by the Supreme Court case of **CMM (Suing as the Next of Friend of and on Behalf of CWM) & 6 others v Standard Group & 4 Others [2023] KESC 68 (KLR)**, the Petitioner seeks Kshs.10,000,000 in general, exemplary, and aggravated damages for unlawful termination and the extensive harm endured over nine years.

11. The Petitioner submitted that his unlawful dismissal led to severe financial ruin, evidenced by his listing under the highest CRB risk category (M9) with a Metro

Score of 271, as shown in the Metropol Credit Reference Bureau report 1. He argued that this status barred him from accessing credit, forcing the sale of his land (Kericho/Kabianga/808) to settle loan arrears, with lasting damage to his financial stability. The Petitioner attributes his dismissal to the undue influence of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, who hold majority control over the 1st Respondent and exercised statutory authority under the Kericho County Kabianga Tea Farm Act, 2021.

12. The Petitioner argued that their collective institutional failure violated his constitutional and statutory rights, and they must be held jointly accountable. In light of the profound personal and economic harm suffered, the Petitioner seeks general, exemplary, and aggravated damages, salary arrears, compensation for future earnings, and any other reliefs the Court deems just.
13. The Petitioner submitted that he should be awarded costs in accordance with **Section 27 of the Civil Procedure Act** and urged the dismissal of the Preliminary objection and court should find that his Petition has merit to proceed for a hearing.

## **Analysis and determination**

14. The court has considered the preliminary objection together with the submissions by both counsels; the issue for determination is whether the preliminary objection is merited.

15. In ***Mukisa Biscuits V West End***

***Distributors(supra)*** the court stated as follows:

***“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 ascertain or if what is sought is the exercise of judicial discretion.”***

16. Law J.A in the same judgment stated 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 contract giving rise to the suit to refer the dispute to arbitration.”***

17. **Section 89 of the Employment Act** 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.”***

18. In this particular case, the Petitioner was summarily dismissed on 16<sup>th</sup> December 2013 for gross misconduct and abuse of office, and he appealed against his dismissal, which was upheld by the Respondent’s Board of Directors on 28<sup>th</sup> August 2015. The Petitioner stated that he became aware of this

decision through a correspondence dated 15<sup>th</sup> July 2022. He further stated that as a result of his dismissal, he suffered severe personal and financial setbacks, including loan defaults with AFC and Kenya Highlands Sacco, blacklisting by the Credit Reference Bureau, and loss of access to credit. He was forced to liquidate his children's education insurance policy, was violently evicted from his company residence, lost vital personal and legal documents, and was unable to complete his postgraduate studies due to financial hardship and reputational damage.

19. ***Section 77 of the County Government Act***

provides that any person aggrieved by a decision of a County Public Service Board or an individual exercising disciplinary control over a county public officer may appeal in writing to the Public Service Commission within 90 days, though late appeals may be accepted under justifiable circumstances. The Commission handles appeals related to employment matters such as recruitment, appointment, remuneration, disciplinary action, retirement, and adherence to constitutional values. Only one appeal is permitted per decision. However, a review of the Commission's decision may be sought if new, material facts emerge

or if there is an apparent error on record, provided the application is submitted within the prescribed timeframe or later if warranted.

20. The Petitioner was clearly dismissed on 16<sup>th</sup> December 2013 and he appealed the decision on 16<sup>th</sup> June 2015. The Respondent dismissed his appeal on 28<sup>th</sup> August 2015 and the board decision to dismiss him was upheld.

21. The Claimant wrote to the board by an undated letter and the court did not see the referenced letter. BUT the Respondent wrote back on 15<sup>th</sup> July 2022 and he asked Petitioner to give an explanation of the charges levelled against him including abuse of office. The Claimant's submissions is that it was only on 15<sup>th</sup> July 2022 that he was given reasons for his dismissal.

22. He filed his petition on 30<sup>th</sup> May 2025. Indeed, it is clear the Claimant was dismissed in 2013. There is no conceivable reason to explain the delay in filing this Petition from 2013 to 2025.

In his submissions on paragraph 14 the Petitioner stated *"The Petitioner's termination occurred in the year 2014 before Kabianga Tea Farm was converted to a public agency. Therefore, at the time of*

*termination Kabianga Tea Farm was operating as a private listed company.”*

23. The Petitioner is well aware his termination occurred long before 2022 and he should have raised a claim soon after to challenge the reasons for termination or to ask for the valid reasons for termination of his employment.

24. Having been dissatisfied with the Respondents' decision to uphold his dismissal on appeal, the Petitioner ought to have promptly pursued further redress by appealing to the Public Service Commission, as provided under **section 77 of the County Government Act**. The court has noted that the Petitioner did not exhaust the internal mechanism provided. In the case of **Speaker of the National Assembly V Karume (supra)** the Court of Appeal stated as follows:

***“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”***

The Tea farm came under County Government of Kericho in 2013 and officially became a company of County Government through Kericho County Kabianga Tea Farm Act which took effect on 6<sup>th</sup> August 2021. But it was still a County Government asset even before the Act was passed.

25. In view of the foregoing, this Honourable Court finds that the Preliminary Objection dated 17<sup>th</sup> July 2025 has merit and is time barred and also the petitioner did not pursue the exhaustion doctrine. The preliminary objection is merited and is granted. The petition is truck out.

26. Each party will bear its own costs of the application.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru  
this 31<sup>st</sup> Day of October, 2025.**

**ANNA NGIBUINI MWAURE  
JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**