



Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Maseno University (Cause E062 of 2025) [2025] KEELRC 2933 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2933 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E062 OF 2025
JK GAKERI, J
OCTOBER 29, 2025

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**

AND

MASENO UNIVERSITY RESPONDENT

RULING

1. The applicant commenced the instant suit by a Notice of Motion dated 10th July, 2025 seeking adoption as judgment of the court the agreement on settlement of terminal dues to Mr. Aggrey E. Ogana, Admas O. Amimo and Mr. Naboth O. Amolo, employees of the respondent, dated 8th April, 2019.
2. It also sought entry of judgment for the applicant against the respondent for Kshs.295,313.00 with interest at court rates till payment in full and costs.
3. The Notice of Motion was expressed under Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and was based on the grounds set forth on its face and the Supporting Affidavits of Mr. Aggrey Ogana, Mr. Adams O. Omimo, Mr. Naboth O. Omollo and Doreen J Nyasio sworn on 10th July, 2025 who deposed that they were employed by the respondent on diverse days between 1992 and January 2004 in the Farm Department and worked for 22 years, 17 years and 10 years respectively, and on termination of employment the respondent did not pay terminal dues and follow up by the claimant union culminated in the agreement dated 8th April, 2019 but no payment was made and follow ups by the claimant union yielded no results.
4. The grievants deponed that the agreement ought to be honoured and the respondent's non-committal to pay violated their right to fair labour practices.



Respondent's case

5. By grounds of opposition filed on 28th July, 2025 dated on even date, the respondent averred that the instant application was bad in law, incurably defective and misconceived and amounted to an abuse of the court process for non-compliance with Rule 7 and/or 69 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and the purported agreement sought to be adopted as judgment of the court was disputed by the respondent and a suit ought to have been filed for adjudication by the court after a fair hearing.
6. The respondent further stated that the court had no jurisdiction by dint of Section 90 of the [Employment Act](#).
7. In a response to the Grounds of Opposition, the claimant union stated that the application was neither misconceived or incurably defective nor bad in law and cited Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, 2024 on the effect of an agreement entered into after conciliation, negotiation or mediation and the court's jurisdiction to adopt the same as its judgment for purposes of enforcement.
8. The claimant maintained that the agreement/consent was mutually arrived at on 8th April 2019 and was duly executed by the parties.
9. Reliance was placed on Article 159(2) of [the Constitution](#) of Kenya and Articles 41, 43, 47 and 50 to urge that interests of justice ought to prevail.
10. Strangely, the claimant union averred that Section 90 of the [Employment Act](#) ought not be entertained in labour matters by dint of Article 159(2) of [the Constitution](#) of Kenya which allowed the disregard for procedural technicalities.
11. That employees ought not to be punished twice and Section 90 of the [Employment Act](#) should not be used to lock out litigants who pursue conciliation.

Applicant's submissions

12. Mr. Wambani for the claimant union submitted that after the agreement was signed on 8th April, 2019 the matter was reported to the Cabinet Secretary who appointed a conciliator who even scheduled meetings in August 2021 and 2nd September 2021 the respondent did not respond and the conciliator issued a report dated 21st January, 2022 making several recommendations which were not adopted by the parties for implementation.
13. That at a meeting held on Internal Collective Bargaining Agreement negotiations, the respondent had agreed to honour the agreement but did not.
14. Mr. Wambani further submitted that under Section 20(1) of the Industrial Court Act and Article 48 of [the Constitution](#) of Kenya, the court had inherent power to hear and determine the matter and the conciliation process had not reached its logical conclusion.

Respondent's submissions

15. Counsel for the respondent isolated two issues for determination namely: competency of the suit and limitation of action under Section 90 of the Employment.



16. On competence of the instant application, counsel cited Rule 7 of the Employment and Labour Relations Court (Procedure) Rules, 2024 on filing of suits vide a statement of claim citing the sentiments of the court in *Proto Energy Ltd V Hashi Energy ltd* [2019] eKLR on institution of suits.
17. Reliance was also placed on Rule 69(2) of the Rules to urge that the claimant did not apply the relevant Rule(s) citing *Kenya Union of Sugar Plantation & Allied Workers V Butali Sugar Mills Ltd* [2021] eKLR, *Kakuta Mainai Hamusi V Peris Pesi Tobiko & 2 Others* [2013] eKLR among others. That rules of procedure were important and the claimants suit was fatally defective and was for striking out.
18. Concerning the court's jurisdiction, counsel submitted that since the termination of employment took place on 28th April, 2014, almost 12 years ago, and the claimant approached the respondent in early 2018 and an agreement was reached in April 2019, the suit was statute barred by dint of Section 90 of the *Employment Act* as the suit was filed on 14th July, 2025.
19. Reliance was placed on the sentiments of the Court of Appeal in *Bernard Kimutai Maiyo V Ampath Plus* [2021] eKLR on accrual of the cause of action.
20. Counsel submitted that ADR was undertaken 6 to 7 years after the termination of employment and it took 12 years to institute proceedings on the termination of employment.
21. Reliance was also placed on *Kenya Union of Domestic, Hotels, Education, Institution & Hospital Workers V Vice-Chancellor Maseno University* [2023] KEELRC 2121 (KLR) where the court struck out the suit for being time barred as the court had no jurisdiction to entertain it, to submit that the instant suit was statute barred and incurably defective and should be disallowed.

Analysis and determination

22. It is not in dispute that the grievants were working for the respondent many years ago having been employed in 1992, 1997 and 2004 respectively, and although no letters of termination of employment were availed, the claimant averred and the respondent did not contest that averment that termination of employment took place by word of mouth on 28th November, 2014 having rendered services for 22 years, 17 years and 10 years respectively.
23. The oldest letter on the issue filed by the claimant union was dated 25th September 2017 from the shop steward to the Branch Secretary. The relevant particulars were attached with specific recommendations.
24. The union's first letter to the respondent was dated 23rd January 2018, more than three (3) years after the event and another followed dated 18th May 2018.
25. Similarly, the union's Branch Secretary's undated letter was received by the respondent on 12th July 2018 whose outcome was an agreement dated 8th April 2019 where both parties agreed on payment of terminal dues to the grievants as follows:
 1. Service pay at 15 days for each completed year of service.
 2. Four (4) month's pay in lieu of notice.
26. This is the agreement the claimant union is seeking adoption as a judgment of this court for purposes of enforcement.
27. Subsequently, however, vide letter dated 10th March, 2020 the Branch Secretary wrote to the General Secretary on the issue providing a history of the case praying for reinstatement of the grievants.



28. The union informed the Cabinet Secretary of the dispute vide letter dated 7th July, 2020 and Mr. Gondosio was appointed as a conciliator and the process culminated in the conciliators report dated 21st January, 2022, which as adverted to elsewhere in this Ruling was never adopted by the parties.
29. The last communication on record was a letter from the Branch Secretary to the Deputy Vice-Chancellor of the respondent, dated 15th August 2023 which rehashed the contents of an earlier one dated 10th March 2020.
30. Arguably, the dispute remained unresolved even after the agreement dated 18th April 2019.
31. The instant suit was instituted on 14th July, 2025 about 11 years later. While the claimant union argues that the court had inherent jurisdiction to enforce its case without undue regard to procedural technicalities as ordained by Article 159(2) of *the Constitution* of Kenya, the respondent on the other hand submitted vociferously that the instant Notice of Motion was incompetent and statute barred and ought to be dismissed.
32. This case, in the court's considered view, turns on the issues isolated and submitted on by the respondent's counsel.
33. It is common ground that although the applicant union expressed its Notice of Motion under the provisions of Sections 1A, 1B, and 3A of the Civil Procedure Acts and the Civil Procedure Rules 2010, the more relevant provisions were those of the Employment and Labour Relations Court (Procedure) Rules, 2024 and in particular Rules 69 and 7 of the Rules.

Under Rule 69

1. Where parties have entered into a conciliation, negotiation or mediation agreement, or, are bound by an arbitral award or a lawful decision reached in Alternative Justice Systems, a party may file the award, decision or agreement for adoption and enforcement as an order of the Court.
 2. An application under Subrule (1) shall be by way of a miscellaneous application instituted through a notice of motion supported by an affidavit exhibiting the award, decision or agreement together with all relevant documents.
34. In the instant case, the applicant filed a cause, which the court Registry gave No.E063 of 2025 as opposed to a Miscellaneous Application.
 35. Rule 69(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024 is couched in mandatory tone. The application for adoption of an agreement under the provisions of the Rule 69(2) "shall be way of a Miscellaneous Application"
 36. The applicant did not comply with this rule and none of the provisions relied upon provide for adoption of agreements entered into pursuant to the provisions of Rule 69(1).
 37. To that extent, the applicants Notice of Motion did not conform with the law.
 38. Be that as it may, the elephant in the living room is whether the applicant ought to have filed a miscellaneous application or a cause for purposes of litigation of the issues in this case.
 39. Contrary to the applicant's submission that the respondent had not contested the agreement, it did not honour it and the matter was subsequently referred to the Cabinet Secretary for Labour and Social Protection and his recommendation were neither adopted by the parties nor implemented. Thus, the dispute remained unresolved as it was prior to the alleged agreement or consent and assuming that



- the only outstanding issue was adoption of the agreement entered into in 2019 was simply untenable. The applicant ought to have filed a substantive claim to prove its case based on evidence but may have considered the limitation period.
40. It is unclear to the court why it took the applicant union more than 5 years and 3 months to apply for adoption of the agreement.
 41. The argument about the COVID-19 pandemic and conciliation cannot avail the applicant.
 42. Relatedly, the applicant union did not explain the object of conciliation after the agreement has been recorded.
 43. The submission that the law does not expressly provide for the period within which agreements ought to be enforced could not avail the applicant either because such agreements ought to be adopted within a reasonable time, which is a factual issues and varies from case to case.
 44. In the court's view, and based on the facts of the instant suit, the optimal option for the applicant was a claim as guided by the provisions of Rule 7 of the Employment and Labour Relations Court (Procedure) Rules 2024, vide a statement of claim.
 45. However, the more potent submission by the respondent is that the instant suit was statute barred by dint of Section 90 of the Employment Act (now Section 89).
 46. This is because both parties are in agreement that termination of employment took place on 28th November 2014 and negotiations commenced in the 2nd half of 2018 more than 3 years after the event and no court action was taken until July 2025 more than 11 years later.
 47. If the applicant's contention was to prevail, it would mean that as long as parties are engaged in conciliation or mediation even after expiry of the limitation period, the resultant agreement may be adopted by the court at the pleasure of the applicant.
 48. Section 89 of the Employment Act provides:

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.
 49. This provision is couched in mandatory tone and disqualifies any civil action or proceedings based on or arising out of the Act or a contract of service in general.
 50. Clearly, the instant application falls within the ambit of the provisions of Section 89 of the Employment Act.
 51. The foregoing provisions denies the court jurisdiction to hear and determine an employment matter filed outside the three year limitation period and since the plea of limitation implicates the court's jurisdiction to hear and determine the matter, it can be raised any point and even by the court suo motu. See Pauline Wanjiru Thuo v David Mutegi Njuru CA 2778 of 1999.
 52. In Letana V Cooper [1964] 2A 11 ER 929 at 934, Lord Diplock defined a cause of action as thus

"A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person".



53. In *George Hiram Ndirangu V Equity Bank Ltd* [2015] eKLR the court held that a cause of action for unfair termination of employment accrued on dismissal.

54. Similarly, in *Attorney General & another V Andrew Maina Githinji* [2016] eKLR the Court of Appeal held:

"The respondents had a clear cause of action against the employer when they received the letters of dismissal on 2nd October 2010. They all had facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by the dismissal but they did not.

Having found that the cause of action arose on 2nd October, 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 time barred as at 1st February, 2013 and I so hold".

55. The foregoing position was further fortified by the Court of Appeal in *G4S Security Services (K) Ltd V Joseph Kamau & 486 others* [2018] eKLR where the court found that the claims of 464 employees had been filed outside the three years limitation period and were statute barred.

56. The court went further and held:

"Time does not stop running on the commencement of reconciliation or other alternative dispute resolution mechanisms provided for under *the Constitution* or any other law...".

57. Finally, in *Gathoni V Kenya Co-operative Creameries Ltd* Civil Application No. 122 of 1981 Porter J held:

"The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest".

See also *Rift Valley Railway (Kenya) Ltd V Hawkins Wagunza Musonye & another* [2016] eKLR, *Times Newspaper Ltd V O'Regan* [1997] I. R. L. R 101 and *Bosire Ogero V Royal Media Services Ltd* [2015] eKLR.

58. Having admitted that the grievants' employment was terminated on 28th November 2014 and the instant application was filed on 14th July, 2025, a simple arithmetic computation shows that the action became statute barred in July 2017, before negotiations and conciliation took place.

59. The agreement sought to be enforced by the applicant was statute barred and the court has no jurisdiction to hear and determine it and downs its tools.

60. The upshot of the foregoing is that the applicant's Notice of Motion dated 10th July, 2025 is struck out with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 29TH DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

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 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 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.

DR. JACOB GAKERI

JUDGE

