**Muchui v Fresh Produce Exporters Association of Kenya (FPEAK) (Employment and Labour Relations Petition E200 of 2024) [2025] KEELRC 2927 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2927 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**EMPLOYMENT AND LABOUR RELATIONS PETITION E200 OF 2024**

**HS WASILWA, J**

**OCTOBER 28, 2025**

**BETWEEN**

**DR. MARGARET NYATORO MUCHUI ..... PETITIONER**

**AND**

**FRESH PRODUCE EXPORTERS ASSOCIATION OF KENYA (FPEAK) ..... RESPONDENT**

**RULING**

1. The Petitioner/Applicant filed a Notice of Motion dated 3rd December 2024 seeking orders that: -

    1. spent

    2. this Honorable Court be pleased to enter judgement as against the Respondent and in favour of the Petitioner/Applicant as prayed in the Petition on account of the Respondent's admission.

    3. costs of this application and the suit be borne by the Respondent.

**Petitioner/Applicant's Case**

2. The Applicant avers that vide an email dated 4th January, 2017, the Respondent sent her a disclaimer letter that outlined her assessed final dues. It is her case that there was a computation error on her legally earned dues which remains unpaid.

3. The Applicant avers that she objected to the Respondent's computation of her final dues vide her letter dated 9th January, 2017 received by the Respondent on 12th January, 2017.

4. It is the Applicant's case that the Respondent has to date despite the multiple clear admissions of owing her outstanding dues, never paid any monies towards offsetting the said outstanding dues. The

Respondent has failed, refused and/or neglected to pay the outstanding dues/ decretal amount and/ or any part thereof.

5. The Applicant avers that it is of great urgency that this matter comes to its logical conclusion and she be allowed to enjoy the fruits of her litigation. She therefore lodged the instant Application to have judgment entered in her favor to enable execution as per the prayers in the Petition.

**Respondent's Case**

6. In opposition to the application, the Respondent filed a replying affidavit dated 25th March 2025, sworn by its Chief Executive Officer, Hosea Machuki.

7. The Respondent submitted that the Petitioner/Applicant initiated the proceedings herein vide the Petition dated 3rd December 2024, where she contemporaneously filed a Notice of Motion Application of an even date under Certificate of Urgency, seeking to haveJudgment entered against the Respondent and in its favor on account of the alleged Respondent's admission.

8. It is the Respondent's case that in accordance with Section 89 of the *Employment Act* Cap 226 Laws of Kenya, no civil action or proceedings based or arising out of the 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 thereof.

9. The Respondent avers that the Petition having been filed outside the statutory timeline, the Petition and Application is incompetent, bad in law and constitutes an abuse of the Court process.

10. The Respondent avers that the Petitioner/Applicant voluntarily resigned from its employment in November 2016, vide her resignation letter dated 16th November 2016 which was duly acknowledged and accepted by the Respondent vide its letter dated 21st November 2016.

11. The Respondent avers that in view of Section 89 of the *Employment Act*, the Petitioner having resigned in November 2016, ought to have commenced any action on or before November 2019.The Petition herein was instituted in December 2024 which is 8 years after she resigned.

12. The Respondent avers that the Petitioner/Applicant has not attempted to explain the delay of more than 7 years before commencing action. Thus, the petition is time barred having been brought outside the statutory limitation period of 3 years as stipulated under Section 89 of the *Employment Act* and without leave of court.

13. The Respondent avers that the application is scandalous, frivolous and vexatious and is only meant to prejudice and harass the Respondent as well as waste precious judicial time.

14. The Respondent further filed a Notice of Preliminary Objection on grounds that:

    a. The suit is time barred, having been brought outside the statutory limitation period of 3 years as stipulated under Section 89 of the *Employment Act* Cap 226 Laws of Kenya.

    b. The Petitioner/Applicant herein resigned from the Respondent's employment in November 2016 and commenced the proceedings in December 2024 which is over 8 years after her resignation.

    c. The Petition herein thus offends provisions of section 89 of the *Employment Act* Cap 226.

    d. This Petition is therefore incompetent, bad in law and constitutes an abuse of the Court process and should be struck out with costs to the Respondent

**Petitioner/Applicant's Submissions**

15. The Applicant submitted on five issues: whether the Respondent admits the Petition as pleaded; whether the Petition is time-barred; whether Petition herein is a Constitutional Petition properly so; whether the Petitioner is entitled to the prayers sought; and who should bear the costs.

16. The Applicant submitted that the Respondent in its Notice of Preliminary Objection and Replying Affidavit both dated 25th March, 2025 further admitted indebtedness by not disputing the chronology of events of the Petitioner's employment. On the basis of these express and unequivocal admissions of the said unpaid dues, it is of great urgency that this matter comes to its logical conclusion and the Petitioner/Applicant be granted protection of and finally be paid her constitutionally entitled unpaid wages as prayed in the Petition.

17. The Applicant submitted that the Court of Appeal case of Choitram v Nazari [1984] KLR 327 held that on an application for judgment on admission, the court should examine the pleadings carefully in order to establish whether there are no specific denials and no definite refusals to admit allegations of fact.

18. She further cited Synergy Industrial Credit Limited -v- Oxyplus International Limited & 2 Others [2021] eKLR and TSS Investments Ltd –v- Blackstone Trading Co. Ltd [2022] eKLR that upheld this position and laid the conditions precedent are:

    i. Facts must be admitted either in the pleadings or in any other written manner.

    ii. The admission by the Respondent should be clear and unequivocal, leaving no room for doubt.

    iii. Facts can be admitted in whole or partially.

    iv. Granting of judgment on admission is a discretionary power exercised by courts sparingly and only where the admission is clear and unequivocal.

19. It is the Applicant's submission that the main question that must be answered by an Applicant seeking judgment on admission is, is there an admission of facts made, either on the pleadings or otherwise? If the answer to this question is yes, the next hurdle to be crossed by an Applicant is whether the admission is clear and unequivocal.

20. The Applicant submitted that there is a clear admission of indebtedness by the Respondent. The Respondent has even before the institution of this suit been admitting indebtedness in its correspondences attached in the petition and this application. This is a clear and unequivocal admission of indebtedness.

21. On the second issue, the Applicant placed reliance in Marwa v National Police Service Commission & 3 others [2024] KEELRC 2292 (KLR) wherein the court stated: "Guided and convinced of the sound jurisprudence that there is not time limit for filing constitutional petition, we find the ground that the trial court erred in failing to dismiss the Petition on account of delay, acquiescence and laches has no merit. Unless expressly stated in *the Constitution*, the period of limitation in the *Limitation of Actions Act* do not apply to violations of rights and freedoms guaranteed in *the Constitution*. The law concerning limitations of actions cannot be used to shield the State or any person from claims of enforcement of fundamental rights and freedoms protected under the Bill of Rights."

22. The Applicant submitted that she has exhibited her numerous efforts thereafter to procure payment of her hard-earned monies through the various correspondences with the Respondent's Chairman of

the Board of Directors (whom she was reporting to) up until July, 2021 all in futility. Thereafter, she served the Respondent with demand letters dated 1st November 2021 and 30th March 2022.

23. It is the Applicant's submission that all the Petitioner's attempts to utilize alternative dispute resolution mechanisms were in line with Art. 159 (2)(c) & (e) of *the Constitution* as well as Sec 15(1) & (2) of the Employment and Labour Relations Court Actwere futile. The Respondent has never communicated its decision to date contrary to the provisions of Article 35 (1)(b) & (2) of *the Constitution* which provides for the right of access to information.

24. The Applicant submitted that the Respondent stringed along the Petitioner with the initial computation followed by the responses from the Respondent's Chairman of the Board of Directors up until July, 2021 that he would be reaching out to her. The Respondent has been fully aware of the pending payment of dues owing to the numerous negotiation attempts.

25. It is the Applicant's submission that the substance in the petition has never been litigated before and the Respondent being fully aware of the substance of the same; even producing evidence in its Replying Affidavit dated 25th March, 2025; the petition would not vex the Respondent's defence and/or prejudice the same as held in the case of Marwa v National Police Service Commission & 3 others [2024] KEELRC 2292 (KLR).

26. The Applicant submitted that the court has discretion to extend time suo moto in a bid to do justice having weighed all the facts as outlined herein; the Petitioner urges it to do as per Rule 30 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 as read together with Rule 80 of the Employment and Labour Relations Court (Procedure) Rules, 2024.

27. On the third issue, the Applicant submitted that it is her inherent and unfettered Constitutional right to be paid for work done; which again her employment history is not denied/disputed by the Respondent.

28. On costs, the Applicant submitted thatcosts in civil proceedings follow the cause. Therefore, having proven that the application and petition are merited, prays for costs of the application and petition to be awarded as prayed.

**Respondent's Case**

29. The Respondent submitted on five issues: whether the Petitioner/Applicant's Petition is time barred; whether the Petitioner/Applicant's Petition is seeking to circumvent the provisions of the *Employment Act*; whether the Petitioner is entitled to the Orders sought in the Petition; whether the Petitioner/Applicant's Application is merited; and who bears the costs

30. The Respondent submitted that the Petitioner/Applicant herein voluntarily resigned from the Respondent's employment on 16" November 2016, and instituted the petition and application on 3rd December 2024. It is thus evident that the intervening period is about 8 years.

31. The Respondent submitted that pursuant to Section 89 of the *Employment Act*, the Court does not have the right or power to entertain any action arising out of the *Employment Act* or on a contract of service as the one herein, three years after the cause of action arose.

32. The Respondent submitted that there is no doubt that the cause of action herein arose in November 2016 when the Petitioner/Applicant voluntarily resigned from the Respondent's employment. She never took any action, she decided to sleep on her rights and only acted more than 8 years after the alleged default occurred. Upon realizing that her claim was time barred, she deliberately filed the

employment claim under the disguise of a Constitutional Petition to evade the provisions of the *Employment Act*.

33. The Respondent submitted that section 89 of the *Employment Act* is couched in mandatory terms and prohibits filing of any suit arising from its provisions including Constitutional Petitions outside the statutory limitation period of 3 years. The petition herein was brought on 3 December2024, more than 8 years outside the statutory time barred.

34. It is the Respondent's submission that no cogent explanation has been given by the Applicant/ Petitioner to justify the inordinate delay in seeking the reliefs herein. Additionally, the Applicant/ Petitioner herein did not seek leave to file the suit out of time.

35. On the second issue, the Respondent submitted that the Petitioner/Applicant's employment claim couched as a Constitutional Petition and Application are incompetent, barred in law, bad in law, offends the doctrine of constitutional avoidance and is an abuse of court process.

36. The Respondent submitted that the Petitioner/Applicant slept on her rights for too long and now she proposes to prosecute an employment claim camouflaged as a constitutional petition, a practice which should be detested as it trivializes constitutional issues and offends the doctrine of constitutional avoidance.

37. The Respondent submitted that the doctrine of constitutional avoidance requires that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. As a general principle, where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed. Therefore, it urged the court to hold that the proper forum for this suit would be to institute an employment claim rather than raising unripe constitutional issues. It placed reliance on the case of K KB v S C M & 5 others (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR) (22 April 2022).

38. On reliefs, the Respondent submitted that it is common ground that the Petitioner/Applicant voluntarily resigned from its employment vide her resignation letter dated 16th November 2016. The said resignation was duly acknowledged and accepted by the Respondent vide its letter dated 21st November 2016 which informed her that the Board had considered and accepted her resignation and out of abundance of consideration and goodwill, the Board informed her that she could leave the Association as from the date of resignation which was 16" November 2016. Consequently, the one-month notice was waived, and it was agreed that the Petitioner could leave immediately without having to wait for the notice period to lapse.

39. The Respondent submitted that the Petitioner/Applicant accepted the conditional waiver and went on with the clearances on 22nd November 2016, a day after the parties agreed on the conditional waiver. As such, the Petitioner/Applicant's allegations and demand for payment in lieu of notice are unsubstantiated, baseless, unwarranted and a mere afterthought aimed at misleading and deceiving this Court.

40. The Respondent submitted that the Applicant declined to collect her dues and in turn vide a letter dated 9th January 2017, claimed that she had not been part and parcel of the waiver and therefore the Respondent owed her. Since then she frequently bullies, threatens and bombards the Respondent with random demand letters of varying, excessive, fanciful, inexplicable and unjustifiable tabulations of the dues owed to her as evidenced by the email of 9th July 2017, demand letters of 1st November 2021 and 30th March 2022.

41. On the fourth issue, the Respondent submitted that the principles for consideration in an application for judgment on admission were clearly captured by the Court of Appeal in the locus classicus case of Choitram v Nazari [1984] eKLR, where the court stated as follows:

> " Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used. The admissions must leave no room for doubt.... An admission is clear if the answer by a bystander to the question whether there was an admission of facts would be 'of course there was"

42. The Respondent submitted that the said admission allegations are outrageous, imaginative and without any basis as there is nothing in the said the email of 4th January 2017 that constitutes an admission. The Petitioner/Applicant further refuted it in her letter dated 9th January 2017. Additionally, the said response which the Petitioner/Applicant alleges that was an admission is in its face not an admission as it denied all the allegations as contained in the demand letter dated 1st November 2021 and the Respondent further reminded the Petitioner/ Applicant that any contemplated action would be statutorily time barred and that it was ready to strenuously defend any ill-conceived suit against it.

43. It is the Respondent submitted that the said letters cannot be construed to amount into an admission for the reasons that they are not plain, obvious and do not depict anything that shows the Respondent's admission, furthermore, they have not met the principles set out in the Choitram v Nazari. On the contrary, the Respondent is very clear that it does not owe the Petitioner/Applicant and that it is ready to defend any ill-conceived claim against it.

44. On the final issue, the Respondent submitted that in dismissing the Petition and Application, it should be awarded costs.

45. I have examined all the averments and submission of the parties herein. The applicant petitioner seeks entry of judgment against the respondent on admission of judgment. The purported admission is contained in an email purportedly sent to the petitioner on 4/1/2017. The email under reference is actually a disclaimer sent to the applicant by the respondent which in my view is not an admission per se of guilt. I find in the circumstances the application is un merited and is dismissed. Parties to proceed with the main petition. Costs in the petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF OCTOBER 2025.**

**HELLEN WASILWA**

**JUDGE**