

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E1009 OF 2023

GLORIA ROBAI KHAFABA.....1ST CLAIMANT/RESPONDENT
CHERUIYOT KORIR VINCENT.....2ND CLAIMANT/RESPONDENT
BILLY LETUNYA ASEKA.....3RD
CLAIMANT/RESPONDENT
NICHOLAS GITOBU.....4TH CLAIMANT/RESPONDENT
SAMUEL ODOYO.....5TH CLAIMANT/RESPONDENT

VERSUS

KENYA PIPELINE COMPANY LIMITED...RESPONDENT/APPLICANT

RULING

1. The Respondent/Applicant has moved this Court through a Notice of Motion dated 5th June 2025 seeking an order to strike out the Claimants’ entire suit for want of jurisdiction. In the alternative, the Applicant seeks an order striking out the Claimants’ claims in so far as they relate to their individual contracts of employment on the ground that the said claims are statute-barred.

2. The Motion is anchored on the grounds appearing on its face and is further supported by the annexed Affidavit of **Emily Thathi**, who describes herself as

the Applicant's Senior Human Resource Officer. Ms. Thati avers that the Claimants' demand for indemnification of costs under Section 178 of the Public Procurement and Asset Disposal Act (PPADA) does not arise from their employment relationship with the Respondent/Applicant but rather pertains to advocate-client costs incurred in MCACC No. 49 of 2018 and HCACECA No. E015 of 2022. She contends that this Court lacks the jurisdiction to determine costs incurred in matters pending before other courts.

3. Ms. Thati further deposes that the Claimants were charged under the Anti-Corruption and Economic Crimes Act (ACECA) and not under the PPADA. Consequently, Section 178 of the PPADA, which provides for indemnification of officers in proceedings instituted under that Act, is inapplicable. She maintains that there is no legal or factual basis upon which the Claimants can seek indemnification under the PPADA since the charges against them did not arise from that statute.
4. She also states that it has been approximately four years and eleven months since the Claimants were suspended pursuant to the provisions of the ACECA. That in accordance with Section 90 (presently Section 89) of the Employment Act, any claim arising from employment, including those relating to

victimization, discrimination, suspension, reinstatement, or unfair termination, must be instituted within three years from the date the cause of action arose. According to Ms. Thathi, the present claims, having been lodged outside that statutory limitation period, are therefore time-barred.

5. Ms. Thathi adds that the 2nd, 3rd, and 5th Claimants were engaged on fixed-term contracts, which lapsed by effluxion of time on 15th January 2020, 10th May 2020, and 1st July 2019, respectively. She contends that since more than three years have elapsed since the expiry of these contracts, any claims premised thereon are likewise statute-barred under Section 90 of the Employment Act.
6. She further asserts that this Court lacks jurisdiction to entertain any employment-related claims, the same having been brought outside the prescribed statutory period.
7. In response to the Motion, all the Claimants filed separate Replying Affidavits. It is worth pointing out that the affidavits sworn by the 1st, 2nd, and 4th Claimants, all sworn on 23rd June 2025, are substantially similar in content.
8. In their respective Replying Affidavits, the 1st, 2nd, and 4th Claimants aver that upon the conclusion of MCACC No. 49 of 2018 and HCACECA No. E015 of

2022, and pursuant to Section 45(1)(c) of the Advocates Act, they reached an agreement with their respective advocates regarding legal fees. Accordingly, they assert that taxation of costs was unnecessary.

9. The 1st, 2nd, and 4th Claimants further depose, on the advice of their advocates on record, that this Court is duly vested with jurisdiction under the Employment and Labour Relations Court Act (ELRC Act), to hear and determine disputes relating to employment and labour relations and all connected matters. They contend that Section 12(1)(a) of the said Act is not restrictive or exhaustive, and that the Court therefore has the power to entertain the entire claim, the cause of action having arisen from their employment with the Applicant.
10. They further assert that, pursuant to Sections 12(3)(vi) and 12(3)(viii) of the ELRC Act, this Court is empowered to grant damages in any circumstance contemplated under the Act or any other written law, and to issue such further or other appropriate relief as it may deem just and fit.
11. The 1st, 2nd, and 4th Claimants also rely on Section 47(3) of the Employment Act, 2007, which, in their view, empowers the Court to hear and determine complaints relating to any infringement of statutory employment rights.

12.They further contend that Section 178(2) of the PPADA is a general indemnification provision that does not confine or limit reimbursement solely to criminal proceedings instituted under the PPADA.

13.The 1st, 2nd, and 4th Claimants aver that the indemnification envisaged under Section 178(2) of the PPADA imposes a broad statutory obligation on the Respondent/Applicant to reimburse them for: *financial losses, including damages, costs, expenses, and liabilities arising from MCACC No. 49 of 2018 and HCACECA No. E015 of 2022; costs incurred in defending themselves against charges instituted by the Director of Public Prosecutions in the said matters; and breach of their employment contracts and rights by the Respondent/Applicant arising from the said proceedings.*

14.The 1st, 2nd, and 4th maintain that their indemnity claims arise by operation of law.

15.They further assert that, pursuant to the proviso to Section 178(2) of the PPADA, their cause of action crystallized only after the trial magistrate delivered judgment in MCACC No. 49 of 2018, acquitting them of all charges, and following the withdrawal of HCACECA No. E015 of 2022.

16. The 1st Claimant additionally avers that her dismissal by way of redundancy was effected in January 2023, when the Applicant abolished the position of Company Secretary and subsequently advertised the new position of Legal Services Manager.

17. In his Replying Affidavit sworn on 19th June 2025, the 3rd Claimant avers that the Amended Statement of Claim dated 12th November 2024 is not exclusively founded on a contract of service.

18. He states that, upon advice from his advocate on record, which advice he verily believes to be true, Section 90 (now Section 89) of the Employment Act, 2007 applies only to claims arising directly from a contract of service. He contends that the Amended Statement of Claim raises several constitutional issues which this Court is duly empowered to hear and determine, and that alleged violations of constitutional rights cannot be rendered statute-barred.

19. The 3rd Claimant further avers that, based on the advice of his advocate, there existed an employment relationship between himself and the Applicant within the meaning of Section 12(1)(a) of the ELRC Act.

20. He further states that he served as a public officer, and that Article 227 of the Constitution of Kenya, 2010, applied to him by virtue of his position within a state organ. Consequently, Section 178 of the PPADA was equally applicable to him. He maintains that both the ACECA and the PPADA were binding upon him in the performance of his duties.

21. The 3rd Claimant also contends that this Court has the requisite jurisdiction, pursuant to Section 12(1)(a) of the ELRC Act, to order reimbursement of the legal costs he incurred in defending the two cases.

22. He avers that he was engaged on a renewable three-year contract, and at the time of his arrest on 7th December 2018 and subsequent arraignment on 10th December 2018, he was still serving under that contract. He was thereafter suspended in accordance with Section 62(1) of the ACECA.

23. He further states that the criminal case against him was dismissed on 7th December 2022, while HCACECA No. E015 of 2022 was withdrawn by the Director of Public Prosecutions on 9th February 2023. He therefore contends that the cause of action arose on 9th February 2023, and not on the dates alleged by the Respondent, and as such, his claim is not statute-barred.

24. The 5th Claimant, in his Replying Affidavit sworn on 19th June 2025, avers that he served the Respondent for a period of 13 years, his last position being that of General Manager – Finance. He states that during the pendency of the criminal proceedings and while he remained on suspension, the Respondent proceeded to fill his position without due regard to his rights to fair administrative action and his legitimate expectation to return to duty.

25. The 5th Claimant contends that it is incorrect to suggest that the principal relief sought in this matter is limited to recovery of legal costs. He asserts that his claim also encompasses unfair termination, arising from the Respondent's failure to renew his contract despite what he terms as an outstanding record of performance.

26. He further avers that, although he seeks reimbursement of legal costs incurred, his primary prayers relate to unfair termination, reinstatement to employment, and declarations that both his suspension and eventual termination were unfair and unconstitutional. He maintains that the termination violated Articles 27, 29, 47, 50, and 236 of the Constitution of Kenya, 2010, matters that fall squarely within the jurisdiction of this Court.

27. According to the 5th Claimant, the other remedies sought are merely incidental and flow from the main grievance of unfair termination. He maintains that the termination process forms the central theme of his claim, while the alleged constitutional violations are offshoots traceable to that process.

28. He further avers that, on the advice of his advocates on record, which advice he verily believes to be true, there exists no limitation period for filing claims alleging violation of constitutional rights.

29. The 5th Claimant further deposes that on 11th December 2018, the Respondent, acting in collusion with the Directorate of Criminal Investigations (DCI), maliciously instituted criminal proceedings against him and five of his colleagues. He was thereafter suspended from duty on 17th December 2018, and despite being found not guilty, the Respondent continued to keep him on suspension pending the determination of MCACC No. 49 of 2018.

30. He avers that it was necessary to await the conclusion of the criminal proceedings before filing the present claim so that his dues could be paid and he could be reinstated, as was allegedly done for some of his co-accused colleagues.

31. He further states, on the advice of his advocates, which advice he believes to be sound, that it would have been contrary to justice and public interest to institute a claim for unfair termination and restoration of benefits before the conclusion of the criminal case, in line with Section 62 of the ACECA.

32. The 5th Claimant asserts that the criminal proceedings in the Anti-Corruption Court were concluded by a judgment delivered on 7th December 2022, in which he was acquitted of all charges. He therefore maintains that his cause of action arose on 7th December 2022, upon the conclusion of the criminal trial, and that the present suit is not time-barred.

33. He further avers that, as at the time of the termination of the criminal proceedings, his employment contract had not expired, since he had not attained the mandatory retirement age of 60 years, and consequently, his claim cannot be deemed time-barred.

34. The 5th Claimant additionally avers that, as at the date of filing the present claim, the Applicant had not remitted his terminal dues.

35.He further adds that as recently as 30th July 2024, the Respondent wrote to him promising to pay the withheld half basic salary, gratuity, and accrued leave, which remain the subject of the present proceedings.

36.He therefore contends that his claim is not statute-barred, and that this Honourable Court possesses the requisite jurisdiction to hear and determine the matter.

37.In a rejoinder, the Applicant filed a Further Affidavit in which Ms. Thathi avers that the primary/dominant relief sought by the Claimants is indemnification or reimbursement of advocate-client costs incurred in MCACC No. 49 of 2018 and HCACECA No. E015 of 2022. She contends that this issue is central and common to all the Claimants, unlike the alleged employment claims, which are individual and fact-specific to each Claimant. It is therefore clear that the predominant issue before this Honourable Court is the indemnification of legal costs.

38.She is advised by the Applicant's Advocates whose advice she verily believes to be true, that the power to award costs or order indemnification for proceedings held before another court lies with the trial court that heard the matter or a court of competent civil jurisdiction, but not this specialist Court.

Additionally, the Applicant is a stranger and not privy to the Claimants' alleged fee agreements.

39. She further avers that although the Claimants are or were employees of the Respondent, the core legal basis for their claim being the indemnification of their legal costs incurred in separate criminal proceedings, does not arise under the Employment Act or from their individual contracts of employment with the Respondent.

40. That the Claimants' claim is anchored in Section 178 of the PPADA, which governs public procurement matters and indemnification for costs incurred in proceedings arising from such matters. She contends that the employment relationship is merely incidental and provides background context; it is not the legal foundation of the primary relief sought.

41. Ms. Thathi contends that this Court is not the appropriate forum to interpret or apply Section 178 of the PPADA, nor does it have jurisdiction to determine or tax advocate-client costs incurred in criminal proceedings before other courts, including the Magistrates' Court and the High Court.

42. She asserts that the recovery or indemnification of such legal costs is a matter that must be pursued in the appropriate forum, either before the court where the

proceedings took place or before a court of competent civil jurisdiction. In her view, the Claimants' claim for reimbursement, therefore, lacks jurisdiction, is improperly before this Court, and should be struck out in its entirety.

43. She is advised by the Applicant's advocates on record, which advice she verily believes to be true, that the causes of action for the 1st to 4th Claimants commenced on 11th December 2018, and for the 5th Claimant on 17th December 2018. In Ms. Thathi's view, it is from these respective dates that time began to run for purposes of instituting the present suit against the Applicant in accordance with the applicable statutory limitation period.

44. She avers that the Claimants' attempt to invoke the adjudication of the issues in the present proceedings as constitutional issues is a deliberate effort to circumvent the statutory limitation period set out under the Employment Act. She is advised by the Applicant's Advocates that Section 90 of the Employment Act is couched in mandatory terms and does not permit the extension of time.

45. Ms. Thathi adds that the Claimants have not attempted to explain the delay in raising the alleged constitutional issues within the three-year limitation period.

Submissions

46. The Motion was canvassed through written submissions, with all parties complying except the 1st, 2nd, and 4th Claimants.

47. In support of the Motion, the Applicant has submitted that the primary and dominant cause of action in the Claimant's suit is the issue of indemnification and reimbursement of legal costs by the Claimant's advocates for services rendered in the criminal proceedings in MCACC 49 of 2018 and HCACECA E015 of 2022. It is the Applicant's further submission that the claim for reimbursement arises from Section 178 of the PPADA and not from their contractual obligation or statutory employment rights. The Applicant further submits that this court lacks jurisdiction to determine the dispute, not directly arising from the Claimants' contract of employment. In support of the Applicant's position, reliance has been placed on **Odongo v Clerk, Nakuru County Assembly & 5 others [2024] KESC 29 (KLR)** and **Gami Properties Ltd v Charming General Trading Ltd [2022] KEELC 2780 (KLR)**.

48. Referencing the decision in **Kenya Ports Authority Pension Scheme & 8 Others v Kinyua Muyaa & Co. Advocates [2022] KECA 578 (KLR)**, the Applicant submits that this Court lacks jurisdiction to adjudicate claims for legal fees arising from matters litigated elsewhere, particularly where the cause of action is unrelated to an employment contract and stems instead from separate criminal or public procurement proceedings.

49. The Applicant further contends that the limitation period under Section 90 is not suspended by the pendency of criminal proceedings or any other external considerations. In support, the Applicant invites the Court to consider the decision in **Francis Atonya Ayeka v Kenya Police Service & Another [2017] KEELRC 90 (KLR)**.

50. On his part, the 3rd Claimant has submitted that whereas the PPADA provides for indemnification of the employee by the procuring entity, the High Court does not have jurisdiction to indemnify his costs. That the issue of costs only arose out of the employment relationship between the Claimant and the Respondent. That since there existed an employment relationship between the Claimant and the Respondent, the dispute on indemnification of legal costs can only be heard and determined by this Court. In support of the 3rd Claimant's position, reference has been made to the case of **Paramount Bank Limited v Naqvi Syed Qamara & another (2017) KECA 528 (KLR)**.

51. On the part of the 5th Claimant, it has been submitted that the main issue deals with employment and whether or not his employment was intact or had been irregularly and unprocedurally terminated by the Respondent hence, this Court has jurisdiction. According to the 5th Claimant, the other reliefs are incidental to the main claim and attach to the main grievance which this Court's mandate extends to. To support the submissions of the 5th Claimant, reliance was placed

on the authorities of **Republic v Clerk, County Assembly of Baringo ex parte William Kassait Kamket (2015) eKLR** and **Naqvi Syed Qmar v Paramount Bank Limited & Another [2015] eKLR**.

52. The 5th Claimant further contended that the present case was filed within the 12-month period for continuing injury as provided under Section 90 of the Employment Act.

Analysis and Determination

53. Following from the record, the Court has singled out the following issues for determination:

- i. Whether this Court has jurisdiction to hear and determine the Claimants' claim for indemnity; and*
- ii. Whether the Claimants' individual claims arising from their respective contracts of service are statute-barred.*

Whether this Court has jurisdiction to hear and determine the Claimants' claim for indemnity

54. It is not in dispute that on 10th December 2018, all the Claimants were arraigned before the Milimani Chief Magistrate's Court in Criminal Case No. 49 of 2018 and charged with offences arising from their involvement in the procurement of the Applicant's Kisumu Oil Jetty project.

55. It is also common cause that, at the material time, the Claimants were employees of the Applicant, and that the criminal charges brought against them arose directly from their employment and related to the manner in which they performed their official duties. Accordingly, the charges were inextricably linked to the Claimants' employment, as the alleged acts leading to their arraignment in court occurred in the course of their duties.

56. Further to the foregoing, it is clear that **Section 178 of the PPADA**, in addition to shielding individuals from personal liability for acts or omissions done in good faith under the Act, also provides for the indemnification of an employee by the procuring entity when the employee is a party to any suit or proceeding, whether civil, criminal, or administrative, arising from the performance of his or her official functions in a procurement or asset disposal process.

57. In the context of this case, the concerned procuring entity is the Applicant, who was the Claimants' employer at the material time.

58. It is therefore clear that any claim for indemnity under Section 178(2) by an employee is founded upon the employment relationship. Where a Claimant under Section 178 is an employee as is the case herein, it follows that the employment relationship constitutes the basis of the claim for indemnity.

59.Indeed, the Claimants have approached the Court in their capacity as former employees of the Applicant, the procuring entity under the PPADA. The dispute, therefore, is between the Claimants and the Applicant in their capacity as employer and employees respectively. Consequently, this matter falls within the jurisdiction of this Court pursuant to Section 12(1)(a) of the ELRC Act.

60.With respect to the Applicant's contention that the Claimants were charged under the ACECA rather than the PPADA, this issue can only be determined at the hearing of the main suit, when the Court will consider whether the Applicant is liable to indemnify the Claimants under Section 178(2).

61.In addition to the foregoing, the losses particularized by the Claimants as arising from their prosecution, such as wrongful dismissal, loss of employment and benefits, loss of alternative employment opportunities, and loss of use or opportunity costs of withheld salaries, all relate directly to the Claimants' contracts of service with the Applicant.

62.Accordingly, the Court is vested with jurisdiction to adjudicate any ancillary issues arising therefrom, including losses, damages, or violations of rights suffered by the Claimants in the course of their employment with the Applicant.

63. In light of the foregoing, and given that the dispute arises within the context of the employment relationship, the Court finds that it is vested with jurisdiction to hear and determine the matter.

64. Before concluding on this issue, the Court notes the Applicant's assertion that the Claimants' claim relates to the taxation of advocate-client costs incurred in the Magistrates' Court and the High Court. Respectfully, the Court finds that argument to be off the mark. This is because it is evident that the Claimants' claim is anchored on Section 178(2) of the PPADA, which provides for indemnity, subject to the employee having engaged a private lawyer or external counsel and not having been adjudged guilty of gross negligence, misconduct, or grave abuse of office. Needless to say, the claim by the Claimants does not relate to issues of taxation of advocate-client costs as argued by the Applicant.

Time bar of individual contracts of employment?

65. The Applicant contends that the Claimants' claims arising from their individual contracts of service are statute-barred pursuant to Section 89 (formerly Section 90) of the Employment Act.

66. Evidently, this issue can only be resolved by ascertaining when the Claimants' individual causes of action arose. From the record, the parties have adopted diametrically opposed positions on this matter.

67. For example, in the Supporting Affidavit sworn by Ms. Thathi in support of the Motion, the Applicant avers that the 2nd, 3rd, and 5th Claimants' claims became time-barred on 15th January 2020, 10th May 2020, and 1st July 2019, respectively, upon the expiry of their fixed-term contracts. However, in Ms. Thathi's Further Affidavit and the Applicant's submissions, it is contended that the causes of action arose on 11th December 2018 for the 1st to 4th Claimants, and on 17th December 2018 for the 5th Claimant.

68. The 3rd Claimant, on the other hand, contends that his cause of action arose on 9th February 2023, when the appeal against him was withdrawn by the Director of Public Prosecutions, and not on the dates alleged by the Applicant.

69. Similarly, the 5th Claimant submits that his cause of action arose on 7th December 2022, upon the conclusion of the criminal trial, and further avers that he has never been issued with a letter of termination.

70. In light of the conflicting positions advanced by the parties, it is apparent that the question of when the causes of action arose for each Claimant cannot be

conclusively determined based on affidavit evidence alone. Accordingly, it is prudent that this issue be resolved upon full hearing and taking of evidence from all parties.

71. For the reasons set out above, the Applicant's Motion dated 5th June 2023 is disallowed with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of November 2025.

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STELLA RUTTO

JUDGE

Appearance:

For the 1st, 2nd and 4th Claimant/Respondent Mr. Gacuba

For the 3rd Claimant/Respondent Mr. Omwenga

For the 5th Claimant/Respondent Mr. Museve instructed by Ms. Guserwa

For the Respondent/Applicant Ms. Kithinzi

Court assistant Elijoy

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