



REPUBLIC OF KENYA



KENYA LAW
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Koyabe v Kenya National Union of Teachers & another (Cause E330 of 2024) [2025] KEELRC 3202 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3202 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E330 OF 2024
SC RUTTO, J
NOVEMBER 14, 2025

BETWEEN

CHRISTINE KWAMBOKA KOYABE CLAIMANT

AND

KENYA NATIONAL UNION OF TEACHERS 1ST RESPONDENT

**KENYA NATIONAL UNION OF TEACHERS BUNGOMA
BRANCH 2ND RESPONDENT**

RULING

1. Before this Court for determination is the Respondents' Notice of Preliminary Objection dated 17th April 2025. The objection is premised on the ground that this Court lacks jurisdiction to hear and determine the claim as it is statute-barred pursuant to Section 90 (presently Section 89) of the *Employment Act*, 2007.

Submissions

2. On 30th June 2025, the Court directed that the Preliminary Objection be canvassed by way of written submissions. Both parties complied and the Court has given due consideration to the said submissions.

Analysis and Determination

3. To my mind, the singular issue for determination is whether the suit herein is time-barred.
4. The gist of the Respondents' Objection is that the present claim was filed more than three years after the cause of action arose.
5. Pursuant to Section 89 of the *Employment Act*, a suit founded on a contract of service, such as the one before this Court, cannot be sustained after the lapse of three years from the date the cause of action arose.



6. A cause of action refers to a factual situation whose existence entitles one person to obtain from the court a remedy against another. In addressing this issue, the Court of Appeal in *Attorney General & another v Andrew Maina Githinji* [2016] eKLR stated as follows:

“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.”

7. Guided by the foregoing precedent, it is evident that in matters concerning termination of employment, a cause of action ordinarily arises when the employment relationship is effectively brought to an end.
8. In the present case, the record bears that the Claimant was not terminated from employment; rather, she tendered her resignation through a letter dated 1st September 2020.
9. The key question for determination, therefore, is when the cause of action actually arose. On this point, the parties have taken diametrically opposed positions.
10. Whereas the Respondents maintain that the cause of action arose on 1st September 2020, being the date the Claimant tendered her resignation, the Claimant contends otherwise, asserting that her resignation took effect on 21st February 2023, when she handed over her tools of work to the Respondents, who in turn accepted her resignation.
11. It is noteworthy that in her resignation letter, the Claimant gave the Respondents three months' notice and indicated that she was converting her 120 accrued leave days to notice in lieu. Further to this, the Claimant requested payment of her dues as set out in an attached schedule.
12. The record also indicates that by a letter dated 27th January 2023, the 2nd Respondent informed the Claimant that the 1st Respondent's Secretary General had been notified of her resignation and observed that she had left without a release letter and without handing over to the branch treasurer. Consequently, the Claimant was directed to hand over.
13. Applying the reasoning in *Attorney General & another v Andrew Maina Githinji* [supra] to the present case, it is clear that the cause of action arose upon the expiry of the three months' notice period stated in the Claimant's resignation letter dated 1st September 2020. In the Court's view, that is the point at which the Claimant's resignation took effect.
14. Indeed, upon the expiry of the notice period, the Claimant had a clear cause of action against the Respondents, having possessed all the material facts necessary to institute legal proceedings for her claims relating to unpaid salary, gratuity, and terminal benefits. In essence, the cause of action had crystallized.
15. With respect to the Claimant's argument that her resignation was effective when she handed over her tools of work to the Respondents, I wish to underscore that whether or not the Respondents accepted the Claimant's resignation is immaterial. No further action was required on their part to validate it; the resignation was complete on its own and was effective upon the lapse of the notice period.



16. In so finding, the court concurs with the position adopted by the Court in Edwin Beiti Kipchumba vs National Bank of Kenya Limited [2018] eKLR, where the learned Judge (Rika J) reckoned that “resignation by an Employee from employment, is basically termination of employment at the instance of the Employee. It is a unilateral act. The Employment Act does not require the Employer to accept a notice of termination issued by the Employee, for that notice to take effect.”
17. In addition to the foregoing, it is noteworthy that the Claimant neither indicated nor suggested that she continued to perform her duties beyond the notice period. From all indications, the employment relationship had been fully severed and effectively brought to an end after the notice period.
18. Applying the provisions of Section 89 of the Employment Act to the present case, it follows that the limitation period began to run on 1st December 2020, being the date when the Claimant’s resignation took effect, and expired on or about 1st December 2023. Thereafter, no action founded on the contract of employment could be sustained.
19. In this instance, the Claimant filed the present suit on 3rd May 2024, approximately four months after the expiry of the statutory limitation period. It is therefore evident that the claim was filed well outside the prescribed timeframe. Accordingly, as at 3rd May 2024, when the Statement of Claim was lodged, it was already statute-barred.
20. It must further be appreciated that Section 89 of the Employment Act is couched in mandatory terms, and the limitation period prescribed thereunder is not subject to extension.
21. This Court aligns itself with, and is bound by, the pronouncements 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
22. It is well settled, as held in Thurania Karauri v Agnes Ncheche [1997] eKLR, that the issue of limitation of time goes to the root of the Court’s jurisdiction. Consequently, a claim filed outside the statutory limitation period deprives the Court of jurisdiction to hear and determine it.
23. Accordingly, the Preliminary Objection dated 17th April 2025 is hereby upheld, with the result that the Claim dated 30th April 2024 and filed on 3rd May 2024 is struck out for being time-barred.
24. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Gisore

For the Respondents No appearance Elijoy 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

