



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ogeto v Vision Point Sacco Ltd (Miscellaneous Application E004 of 2025)  
[2025] KEELRC 3142 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3142 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
MISCELLANEOUS APPLICATION E004 OF 2025  
NZIOKI WA MAKAU, J  
NOVEMBER 12, 2025**

**BETWEEN**

**CORNELIUS NYARANGO OGETO ..... APPLICANT**

**AND**

**VISION POINT SACCO LTD ..... RESPONDENT**

**RULING**

1. By way of an application dated 26<sup>th</sup> March 2025, brought under Order 51 Rule 1 of the Civil Procedure Rules, sections 4, 27 and 28 of the Limitations of Actions Act, Articles 10, 22, 23, 28, 41, 47 and 50 of *the Constitution*, as well as sections 12, 17(10), 49, 50, 76(1) and 93 of the *Employment Act*, the Applicant seeks the following orders:
  - i. That this Court extends time and grants him leave to file suit against the Respondent out of time.
  - ii. That the annexed draft statement of claim be deemed as duly filed upon payment of the requisite fee.
  - iii. That the Respondent be ordered to pay him withheld salary from December 2017 to date, and to continue paying his salary until the conclusion of this matter pursuant to Rule 17 of the Employment and Labour Relations Court (Procedure) Rules 2016.
  - iv. That he be reinstated or, in the alternative, placed on paid suspension until the matter is heard and determined.
  - v. That a stay order be issued restraining the Respondent from proceeding with the civil suit it initiated against him at the Cooperative Tribunal regarding the loan issued to him by virtue of his employment, pending finalisation of this matter, under section 12(3)(i) of the *Employment*



and Labour Relations Court Act, section 6 of the Civil Procedure Act and Order 42 Rule 6 of the Civil Procedure Rules.

- vi. That the Court grants any other order it deems just and expedient.
  - vii. That costs of the application be provided for.
2. In support of the application the Applicant contends that he was employed by the Respondent as a Systems Auditor from 1<sup>st</sup> August 2013, a position he held diligently till the 16<sup>th</sup> November 2017 when he was denied access to his workplace. Despite numerous requests for reasons for the exclusion none was given. Subsequently he was arrested on two occasions, first on 13<sup>th</sup> March 2018 and secondly on 17<sup>th</sup> September the same year and charged with stealing by servant at the Keroka Principal Magistrates Court. He states that notwithstanding the pendency of the criminal case, the Respondent went ahead and filed a civil suit against him before the Co-operative Tribunal in respect of a loan advanced to him during his employment. He was later convicted by the Trial Court on 20<sup>th</sup> April 2022, but the conviction was overturned on appeal by the High Court at Nyamira.
  3. The Applicant asserts that following his acquittal, he demanded compensation and payment of salary arrears from the Respondent, but his requests were ignored. He contends that the wrongful criminal prosecution was the cause of the delay in filing his claim within the statutory limitation period. He therefore urges the Court to allow the application, arguing that the Employment Act and the Constitution protect employees from unlawful termination and malicious prosecution, while the Limitation of Actions Act permits extension of time in exceptional circumstances such as the present one. He further argues that the balance of convenience tilts in his favour.
  4. In response, the Respondent filed a Replying Affidavit sworn on 13<sup>th</sup> June 2025 by its Chief Executive Officer, Mr. Daniel Orambui Ombaso. He contended that the application was an abuse of the court process and that the orders sought were untenable. He averred that claims founded on contract cannot be instituted after six years as provided under section 4(1) of the Limitation of Actions Act. Further, he asserted that section 90 of the Employment Act provides a strict limitation period of three years, which cannot be extended.
  5. Further supporting this position, he averred that section 90 of the Employment Act is couched in mandatory terms and that limitation periods in employment-related claims cannot be extended, unlike those founded on torts. In view of the foregoing, he maintained that the suit was dead on arrival and granting leave would be tantamount to judicial legislation. Regarding the stay sought against proceedings before the Co-operative Tribunal, it was deposed that the same was untenable as it concerned a lawful loan which the Applicant had failed to service. In respect of reinstatement the Respondent maintained that the same was equally time barred since the Applicant had been dismissed nearly eight years ago.
  6. In rejoinder to the Replying Affidavit, the Applicant filed a Supplementary Affidavit sworn on 25<sup>th</sup> June 2025. He urged the Court to strike out the replying affidavit as its deponent Mr. Daniel Ombaso had not exhibited a company resolution authorising him to act on behalf of the Respondent. Regarding limitation, he maintained that the cause of action arose, and legally became actionable upon his acquittal on 30<sup>th</sup> May 2024 at the conclusion of his malicious prosecution. He asserted that in employment matters causes of action could arise at different times depending on different circumstances, i.e. whether there was a continuing injury, or an unresolved grievance. The Applicant further contended that the court had a wide discretion under Article 159(2)(d) of the Constitution to administer justice without undue regard to procedural technicalities. The Applicant also contended that section 90 of the Employment Act did not bar claims involving violation of fundamental rights



tied to employment such as the ones he was raising. In respect of the loan, he was adamant that it was advanced by virtue of his employment and was secured by his salary. In view of the foregoing, he maintained that the application remained uncontroverted.

7. In a further reply, the Respondent filed a Further Affidavit sworn by the same Mr. Ombaso, its Chief Executive Officer, who averred that he had been duly authorised to represent the Respondent on 3<sup>rd</sup> June 2015, as evidenced by the authority annexed to the Further Affidavit. He reiterated that the issue of limitation was not a mere procedural matter but one that went to the jurisdiction of the Court, which can only be conferred by statute. He contended that the Applicant, having slept on his rights for over three years, was estopped from reviving a claim barred both in law and in equity.
8. The application was canvassed by way of written submissions.

### **Applicant's Submissions**

9. The Applicant identified the issues for determination as:
  - a. whether he had demonstrated sufficient cause to warrant the Court's exercise of discretion to extend time for filing his intended claim.
  - b. Whether he is entitled to the reliefs sought, including payment of withheld salary and benefits from December 2017, reinstatement to employment, stay of proceedings in Cooperative Tribunal Case No. CTC 614 of 2019, and damages for malicious prosecution.
10. On the first issue, the Applicant submitted that although section 90 of the *Employment Act* provided for a three-year limitation period, time could be enlarged in deserving and exceptional circumstances where justice and equity demanded. Furthermore, he asserted that the Court was empowered to extend time to file claims where fairness and protection of rights demand, in line with Articles 22, 23, 41, 48, 50, 159 and 258 of *the Constitution*. In support, he cited *G4S Security Services (K) Ltd v Joseph Kamau & 468 others* [2018] eKLR, where the court affirmed that extension of time is permissible where delay is explained and justice so requires. To further buttress his position, he relied on *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* [2014] eKLR, in which the Supreme Court outlined guiding principles for extension of time, including the length and reason for delay, chances of success, prejudice to the respondent, importance of compliance with timelines, and public interest. In respect of the reason for delay, the Applicant submitted that the pendency of the criminal case incapacitated him from filing the employment claim earlier since the charges were directly related to his employment, and any parallel proceedings would have prejudiced the criminal case. Additionally, he asserted that his liberty was under threat, and parallel proceedings risked conflicting outcomes. He submitted that the delay was neither deliberate nor negligent but arose from circumstances beyond his control. He asserted that the Respondent would suffer no prejudice if leave were granted, whereas he would face grave injustice if barred from pursuing his claim after being vindicated by the High Court.
11. The Applicant further submitted that denying him an opportunity to ventilate his employment grievances would offend both the *Employment Act* and *the Constitution*. He emphasized that under Articles 41, 48, 50(1), and 159(2)(d) of *the Constitution*, the Court is obligated to uphold fair labour practices, ensure access to justice, guarantee a fair hearing, and administer justice without undue regard to procedural technicalities. He relied on *Attorney General & another v Andrew Maina Githinji & another* [2016] eKLR, where the court upheld employees' constitutional right to fair labour practices and due process. In conclusion, the Applicant urged the Court to allow the application, asserting that the malicious prosecution instigated by the Respondent was the cause of the delay and that the intended claim raises serious constitutional issues relating to fair labour practices, unlawful termination, and withheld benefits.



## Respondent's Submissions

12. The Respondent submitted that the application was a futile attempt to revive a claim that had long been extinguished by operation of law. It further contended that the application amounted to a direct assault on the doctrine of limitation, therefore the Court lacked jurisdiction to grant the orders sought. The Respondent maintained that the provisions of section 90 of the *Employment Act* are mandatory and leave no room for extension of time beyond the prescribed three years. It relied on *John Kiiri Njiiri v University of Nairobi* [2021] eKLR, where the court held that limitation periods in employment claims cannot be extended, as sections 27 and 28 of the *Limitation of Actions Act* apply only to claims founded on torts and not on contracts of employment. In further opposition to the application the Respondent submitted that the Applicant's reliance on constitutional provisions and authorities purporting to grant discretion to enlarge time was misplaced. It asserted that the authorities cited by the Applicant did not support his case but rather fortified the position that statutory limitation in employment matters is absolute.
13. In respect of the Respondent's Chief Executive Officer, Mr. Daniel Orambui Ombaso's lack of competence to represent it in the suit, the Respondent maintained that the allegations were unfounded. It highlighted the legal authority marked as "DO 1A" attached to its further affidavit. In conclusion, the Respondent submitted that the application was fatally defective, frivolous, and an abuse of the court process. It urged the Court to uphold the sanctity of statutory timelines and dismiss the application with costs, emphasizing that justice is achieved not through indulgence or sympathy but through fidelity to the law as enacted.

## Disposition

14. The issue for determination here is the question of leave to file suit out of time. The issue is one that squarely delves into the jurisdiction of this Court. Jurisdiction is conferred by statute. The locus classicus on jurisdiction is the celebrated case of *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where the Court of Appeal per Nyarangi JA held as follows:-

"I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

[Underline mine]

15. The authority for this holding by Nyarangi JA is to be found in the writings of John Beecroft Saunders in a treatise which is no longer published headed *Words and Phrases Legally defined – Volume 3: I – N* and it states at page 113 the following about jurisdiction:-

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these



characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the fact exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

[Underline mine]

16. In the case of Attorney General & another v Andrew Maina Githinji & another [2016] KECA 817 (KLR) Philip Waki JA in a majority decision of the Court of Appeal grappled with a similar question as the one before me. In that case, Waki JA with whom Kiage JA concurred, held as follows:-

Section 90 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.”

.... By expressly inserting section 90, the intention of Parliament, in my view, at least in part, must have been to protect both the employer and the employee from irredeemable prejudice if they have to meet claims and counter claims made long after the cause of action had arisen when memories have faded, documents lost, witnesses dead or untraceable. It is understandable therefore when the Section peremptorily limits actions by the use of the word ‘shall’.

[Underline mine]

17. The foregoing is amply clear that the Court has no capacity to extend time where limitation sets in. The Applicant’s contract terminated in December 2017. By application of simple arithmetic, his claim should have been presented to Court by December 2020. The period for filing a claim thus expired and the Applicant having done nothing to initiate the claim opted to forego his claim. The motion before me is devoid of merit and must be dismissed with costs to the Respondent.

Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 12<sup>TH</sup> DAY OF NOVEMBER 2025**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

