



**REPUBLIC OF KENYA**

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

**CAUSE NO. E491 OF 2024**

**AMOS KUNG’U WABARU.....  
.....CLAIMANT**

**-VERSUS-**

**ROYAL MABATI FACTORY LIMITED.....1<sup>ST</sup>  
RESPONDENT**

**HERITAGE MABATI MILLS LIMITED.....2<sup>ND</sup>  
RESPONDENT**

**RULING**

**Introduction**

1. By a Statement of Claim dated 24<sup>th</sup> June 2024, the Claimant sued the Respondent seeking damages for various violations and terminal benefits. In response, the Respondent raised Preliminary Objection to the suit on the following grounds:-

***a) This Honourable Court lacks the jurisdiction to entertain this suit since the same is time***

***barred by effluxion of time by dint of Section 90 of the Employment Act, 2007.***

***b) This Honourable Court lacks jurisdiction to entertain this claim by dint of Section 29 (3) of the Employment and Labour Relations Court Act, (Cap 234B) and Gazette Notice No. 6024 dated 10<sup>th</sup> June, 2018 in which the Chief Justice appointed Magistrates of the rank of Senior Resident magistrates and above, to hear employment matters within their Areas of jurisdiction limited to pecuniary not exceeding Kshs. 80,000 gross monthly salary.***

***c) This Claim is defective, discloses no reasonable cause of action, is scandalous, frivolous and vexatious and otherwise an abuse of the Court process.***

2. The objection was to be disposed of by written submissions but only the Respondent filed. However, the Claimant filed Grounds of Opposition dated 21<sup>st</sup> July 2025.
3. The Respondents case is that the suit is time barred by dint of section 90 of the Employment Act because the termination was done in June 2021 and the suit was filed on 1<sup>st</sup> July 2021. It cited several judicial precedents to support the objection.

4. As regards the Pecuniary Jurisdiction, it was submitted that the Claimant was earning a salary less than the Kshs. 80,000 provided in the Gazette Notice No. 6024 of 22<sup>nd</sup> June 2018. Under the said notice, an employee earning less than Kshs. 80,000 is allowed to file suit in the Magistrate's court. In support, of the above submission, several judicial precedents were cited. For the said reasons, the Respondent urged the court to dismiss the suit with costs.
5. On the other hand, the Claimant contended that the objection lacks merits because the suit is not time barred and the court has jurisdiction to determine the suit. He prayed for the objection to be dismissed with costs.
6. Having considered the Pleadings, the Objection, Grounds of Opposition and the submissions filed, the issues for determination are:-
  - a) Whether the suit is time barred.
  - b) Whether the court lacks Jurisdiction.

## **Analysis**

### **Time barred suit**

7. Section 90 of the Employment Act provides as follows:-

***“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, 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 the case of continuing injury or damage within twelve months next after the cessation thereof.”***

8. According to the above provision a suit founded on employment contract like the instant one ought to be commenced within three years from the date when the cause action arose. In this case, the Claimant pleaded in paragraph 11, 16 and 29 of his Statement of Claim that his services were terminated in June 2021 but he never specified the date.
9. However, in Paragraph 14 he pleaded that on 29<sup>th</sup> April 2021, he fell ill and got admitted in Aga Khan University Hospital until 2<sup>nd</sup> May 2021 when he was discharged to go back to work. Upon his return to work, the Human Resource Officer informed him to go back home to recuperate until he was called back. He was never called back and the Human Resource Officer stopped picking his calls.
10. He further pleaded that the Respondent continued to pay him salary until 12<sup>th</sup> July 2021. In the circumstances I find that the employment relationship stretched to 12<sup>th</sup> July 2021 because salary was paid to the Claimant till then. This suit

having been filed on 1<sup>st</sup> July 2024 is therefore not time barred as it was filed within the limitation period of three years from 12<sup>th</sup> July 2021 when the last salary was paid to the Claimant.

### **Jurisdiction**

11. The Respondent submitted that the suit ought to be filed in the Magistrates Court because the Claimant was earning less than Kshs. 80,000 monthly salary. He has in deed pleaded in his claim that he was earning Kshs. 41,030, and therefore I agree with the Respondent that under the Gazette Notice No. 6024 of 2018, the lower court has jurisdiction to determine the suit.
12. The above position does not mean that this court is divested of the jurisdiction to determine the suit. However for good order, it is only fair that the lowest court with jurisdiction be given the first priority to entertain a dispute and appellate jurisdiction be invoked if the need arises.

### **Conclusion**

13. I have found that the suit is not time barred as the parties were still in employment relationship as at 12<sup>th</sup> July 2021 when the last salary was paid to the Claimant. I have further found that the suit ought to be filed in the Magistrates Court considering that the Claimant was earning less Kshs. 80,000 monthly salary. For the said reasons, I hold that the

Preliminary Objection is partially successful but instead of striking out the suit I order that it be transferred to the Chief Magistrates Court at Milimani for hearing and disposal. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**ONESMUS MAKAU  
JUDGE**

**Appearance:**

Mutinda for the Claimant

Nasimiyu for the Respondent