

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT NAIROBI**  
**CAUSE NO. E660 OF 2025**  
**EDWIN AMORO OTUNGO**  
**CLAIMANT**

**v**

**TEACHERS SERVICE COMMISSION**  
**RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**RULING**

1. Edwin Amoro Otungo (the Claimant) sued the Teachers Service Commission (the Respondent) on 16 July 2025, alleging unfair termination of employment, unfair labour practices and breach of contract.

2. The Respondent filed a Response and Notice of Preliminary Objection on 3 September 2025.

3. In the Notice of Preliminary Objection, the Respondent contended:

TAKE NOTICE that the Respondent herein will raise a Preliminary Objection on a point of law on the ground that the suit is time-barred and offends the mandatory

provisions of section 89 of the Employment Act, 2007 thus, the Honourable Court has no jurisdiction to hear and determine the matter.

4. The Respondent filed its submissions with the Preliminary Objections

5. The Respondent drew the Court's attention to the decision of the Court of Appeal in *Attorney General & Ar v Andrew Githinji & Ar* (2016) eKLR, and urged that a cause of action in an unfair termination dispute arises at the point of termination.

6. The Respondent also urged that the Claimant knew all the facts as to the cause of action at the time of dismissal and the application for review did not suspend time from running for purposes of limitation.

7. To buttress this submission, the Respondent cited *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & Ar* (2016) eKLR and

*Benjamin Wachira Ndiithi v Public Service Commission & Ar* (2014) eKLR.

8. The Claimant filed his submissions on 8 September 2025.

9. The Claimant contended in his submissions that the cause of labour occurred on 11 November 2022 when the Respondent's Review Panel decided to uphold the dismissal.

10. The Claimant called to his aid the decisions in *Kenya Revenue Authority v Menginya Salim Murgani* (2010) KECA 164 (eKLR); *Geoffrey Muthiga Kabiru & 2 Ors v Samuel Munga Henry & 1756 Ors* (2015) (eKLR) and Supreme Court Petition No. 4 of 2021, *United Millers Ltd v Kenya Bureau of Standards & 6 Ors*, to assert that he could not move the Court before exhausting the alternative dispute resolution avenues in place.

11. The Claimant further asserted that Articles 47 and 50 of the Constitution guaranteed him the

rights to fair administrative action and access to justice.

12. When the parties appeared on 22 October 2025, the Claimant confirmed that he had filed a response to the Objection and the Court reserved its ruling on it.

13. The Court has considered the Statement of Claim, Response, Notice of Preliminary Objection and submissions.

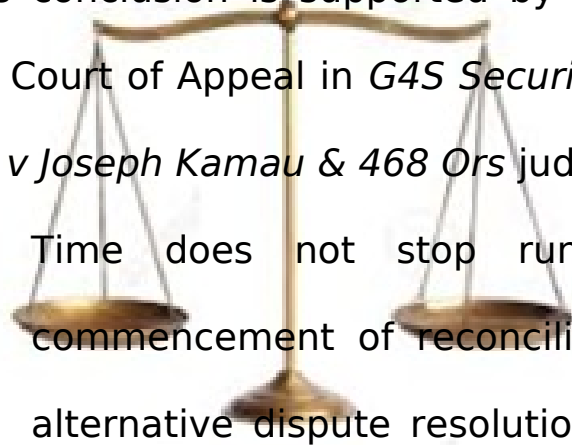
14. The Claimant pleaded in paragraph 4 of the Statement of Claim that the Respondent dismissed him through a letter dated 9 March 2022.

15. The Claimant further pleaded in the same paragraph that the Respondent invited him through a letter dated 6 October 2022 to attend a review hearing on 11 November 2022. The Respondent's Review Panel upheld the decision to dismiss.

16. The determinative question is, when does a cause of action accrue in an unfair termination of employment action?

17. In this Court's view, an employee suffers a legal injury or a legal wrong at the time of dismissal and not at the point where the employer may decide on an appeal or review.

18. This conclusion is supported by the holding of the Court of Appeal in *G4S Security Services (K) Ltd v Joseph Kamau & 468 Ors* judgment that:



Time does not stop running on the commencement of reconciliation or other alternative dispute resolution mechanisms provided for under the Constitution or any other law.

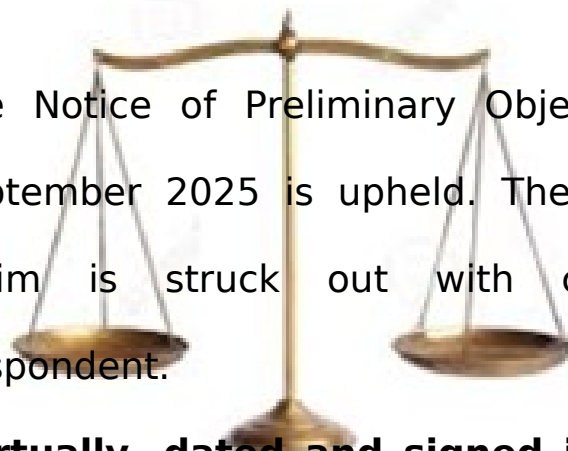
19. The Claimant's cause of action on unfair termination of employment, therefore, accrued on 9 March 2022, and by dint of section 89 of the Employment Act, 2007, he had 3 years within which to challenge the decision in Court.

20. The 3 years lapsed on or before 8 March 2025.
21. The Claimant moved the Court on 16 July 2025, outside the prescribed 3-year period.
22. The Court has no jurisdiction to extend the time for instituting an action or grant leave to institute an action.

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**Orders**

23. The Notice of Preliminary Objection dated 3 September 2025 is upheld. The Statement of Claim is struck out with costs to the Respondent.



**Delivered virtually, dated and signed in Kisumu on this 21<sup>st</sup> day of November 2025.**

**NAIROBI**

**Radido Stephen, MCIArb**

**Judge**

**Appearances**

For Claimant

Otachi Orina &  
Associates  
Advocates

For Respondent

Flora Manyasa,

Advocate

Court Assistant

Wangu

**EMPLOYMENT AND LABOUR RELATIONS COURT**



**NAIROBI**