



REPUBLIC OF KENYA



**Omoro v Kenya Power & Lighting Company (Cause E054 of 2025)
[2025] KEELRC 3343 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3343 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E054 OF 2025
JK GAKERI, J
NOVEMBER 27, 2025**

BETWEEN

DUNCAN ONGOYA OMORO CLAIMANT

AND

KENYA POWER & LIGHTING COMPANY RESPONDENT

RULING

1. The claimant commenced the instant suit vide a Memorandum of Claim dated 26th June 2025 filed on even date alleging wrongful unjustifiable malicious and unfair termination dismissal from employment by the respondent.
2. The claimant alleged that the process of termination and or wrongful dismissal commenced on 27th October 2021 and the interim decision of termination of employment made on 8th December 2021 was upheld on 27th June 2022.
He prayed for 12 months salary compensation and costs.
3. The respondent entered appearance on 23rd October 2025, filed a statement of response on the same date together with a Notice of Preliminary Objection dated 22nd October 2025 challenging the jurisdiction of this court by dint of the provisions of Section 89 of the *akn ke act 2007 11 Employment Act* and section 3(1) and (2) of the *akn ke act 1974 5 Public Authorities Limitation Act*.
4. The respondent's objection is that the claimant's suit was statute barred and was for dismissal.
5. When the matter came up on 27th October 2025, the claimant's counsel informed the court that he had received a Notice of Preliminary Objection and proposed that it be canvassed by way of written submissions, 7 days a piece and Mr. Muchai for respondent was agreeable and both parties confirmed compliance on 13th November 2025.



6. In urging its case that the court had no jurisdiction to hear and determine the instant suit, the respondent's counsel relied on the sentiments of the courts in *Nyabuto Arambe Abusa V Kenya Power & Lighting Co. Ltd* [2017] eKLR, *Paul Chiuri Muriuki v Kenyatta National Hospital* [2015] eKLR, *Charles Bob Odhiambo Owuonda V Kenindia Assurance Co. Ltd* [2014] eKLR, *Morris Kyengo Makovu V Kenya Power & Lighting Co. Ltd & 3 others* [2021] eKLR, *Josephat Ndirangu V Henkel Chemicals EA Ltd* [2013] eKLR, *James Mugeria Igati V Public Service Commission* [2014] eKLR, *Rift Valley Railways (K) Ltd V Hawkins Wagunza Musonye & another* [2016] eKLR, *Kenya Airways Ltd V Transport and Allied Workers Union* [2019] eKLR and *Divecon V Samani* [1995 – 1998] EA 48, the net effect of which was that the claimant's suit was stale and the court had no jurisdiction to hear and determine it.
7. Counsel for the claimant on the other hand submitted that the claimant's case related to an act, neglect and or default that took place on 27th June 2022 contrary to the respondent's position that it took place on 10th December 2021.
8. Counsel urged that Section 89 of the *akn ke act 2007 11 Employment Act* prevented the filing of suits on acts, neglect or default filed beyond three (3) years after the event and in the claimant's case the act, default neglect took place on 27th June 2022 and upholding the Preliminary Objection would be tantamount to an imposition of a different case on the claimant and the Preliminary Objection ought to be dismissed.

No case law was cited to reinforce the submission.

9. It is trite law that the locus classicus exposition on what constitutes a Preliminary Objection are the sentiments of Law JA and Sir Charles Newbold P in the often cited decision in *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* [1969] EA 696.

Law JA stated:

“So far as I am aware a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”

10. The court expressed similar sentiments in *John Musakali V Speaker County Assembly of Bungoma & 4 others* [2015] KEHC 2131 (KLR).
11. A Preliminary Objection does not deal with disputed facts as held in *Oraro V Mbaja* [2005] KEHC 3182 (KLR). Bearing in mind that the respondent's notice of Preliminary Objection is based on one of the examples of Law JA cited elsewhere in this ruling, the court is satisfied that the notice meets the threshold of a Preliminary Objection.
12. More significantly, and as correctly submitted by the respondent's counsel, limitation of action implicates the court's jurisdiction to hear and determine the suit before it and is thus a jurisdictional and threshold issue.
13. It is not a procedural technicality. See *Bosire Ongero V Royal Media Services* [2015] eKLR.
14. The only issue for determination is whether the claimant's suit against the respondent is statute barred by dint of Section 89 of the *akn ke act 2007 11 Employment Act*, which provides:



15. Notwithstanding the provisions of section 4(1) of the *akn ke act 1968 21 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.
16. This provision is couched in mandatory tone and phrased in the negative to emphasize that no action based or arising out of the *akn ke act 2007 11 Employment Act* or contract of employment in general ought to be filed after expiration of three years from the date of accrual of the cause of action.
17. The provisions of Section 3(1) and (2) of the *akn ke act 1974 5 Public Authorities Limitation Act* embodies similar provisions.
18. To determine whether the claimant's case is statute barred, it is critical to discern when the cause of action accrued.
19. In *George Hiram Ndirangu V Equity Bank Ltd* [2015] eKLR, the court held that a cause of action for unfair termination of employment accrued on termination or dismissal.
20. Similarly, in *Attorney General & another V Andrew Maina Githinji & another* [2016] eKLR, the Court of Appeal held 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 placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by the dismissal but they did not. Having found that the cause of action arose on 2nd October 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 time-barred as at 1st February 2013 and I so hold”.

The court is guided accordingly.

21. See also *G4S Security Services (K) Ltd V Joseph Kamau and 468 others* [2018] eKLR where the Court of Appeal found that the claims for 464 of the respondents were statute barred by dint of Section 89 of the *akn ke act 2007 11 Employment Act*. The reasoning of the court was that since their employment was terminated in 2008, 2009 and 2010 and the suit was filed in 2014, the three years limitation period had lapsed.
22. I will now proceed to determine whether the claimant's suit was statute barred in the context of the foregoing principles of law.
23. In his memorandum of claim dated 26th June 2025 the claimant made no express reference to the date of termination of employment preferring to refer to it as interim decision which was confirmed by letter dated 27th June 2022 and according to the claimant the three years limitation period started running from 27th June 2025 and had not lapsed by 26th June 2025 when the instant suit was filed.
Also left out were the details of the so-called interim decision.
24. However, one of the documents the claimant filed was the letter of dismissal from employment dated 8th December 2021, which the claimant received and as a consequence requested for several documents vide letter dated 5th January 2025, appealed vide letter dated 11th March 2022 and was notified of the outcome vide letter dated 27th June 2022.



25. The letter of dismissal from service was unequivocal that it was with immediate effect under Clause 11 of the Employment Agreement and the reasons were outlined.
26. Clearly, juxtaposing the facts of this case against the provisions of Section 89 of the *akn ke act 2007 11 Employment Act* and relevant judicial pronouncements cited elsewhere in this ruling, the inescapable conclusion is that the claimant's suit against the respondent is statute barred.
This is why.
27. Since the letter of dismissal from employment was dated 8th December 2021 and the dismissal was immediate, the cause of action accrued the moment the claimant received the letter which explains his acknowledgment of the letter in his letter dated 5th January 2022.
28. The three years limitation period had lapsed even assuming that he received the letter of dismissal on 5th January 2022. The claim was filed more than six (6) months later and was therefore statute barred.
29. As adverted to elsewhere in this ruling, a plea of limitation implicates the court's jurisdiction to hear and determine the suit before it and jurisdiction, as exquisitely captured by Nyarangi JA in the Owners of Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd [1989] 1 KLR, is everything and without it a court had no power to make one more step and must down its tools.
30. It requires no emphasis that a court of law has no jurisdiction to hear and determine a statute barred claim.
31. The upshot of the foregoing is that the respondent's Notice of Preliminary Objection dated 22nd October 2025 has merit and this court has no jurisdiction to hear and determine the instant suit and it is accordingly struck out with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 27TH DAY OF NOVEMBER 2025.

DR. JACOB GAKERI

JUDGE

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 has been guided by Article 159(2) (d) of *akn ke act 2010 constitution 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 *akn ke act 2010 constitution the Constitution* and the provisions of Section 1B of the *akn ke act 1924 3 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.

DR. JACOB GAKERI

JUDGE

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