

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E296 OF 2024

KUDHEIHA WORKERS.....
CLAIMANT
VERSUS
KENYATTA NATIONAL HOSPITAL.....
RESPONDENT

RULING

- 1.** This ruling relates to the Respondent’s Notice of Motion application dated 4th June, 2025 seeking that the Claimant’s claim dated 15th April, 2024 be dismissed for being time barred.

- 2.** The Respondent contends that the Claimant’s suit is statute barred on the basis that the cause of action arose on 2nd April 2021, yet the claim was filed on 24th April 2024, three years after the accrual of the cause of action contrary to Section 89 of the Employment Act.

- 3.** It is the Respondent’s position that the court has no jurisdiction to extend time or entertain the suit as filed. The Respondent states that the grievant had already appealed against its letter of 20th April 2021 to the Public Service Commission, and that the Public Service Commission issued

its decision on 14th May 2025, and no further appeal has been filed against that decision.

- 4.** The Respondent states that the issues raised in the present claim are directly and substantially the same as those already determined by the Commission, and that hearing the matter would waste judicial time.
- 5.** The Respondent avers that the application has been filed without delay, and granting the sought reliefs would serve the interests of justice.
- 6.** The Claimant opposed the application by a replying affidavit sworn on 19th August, 2025, by one Endro Otieno, the Industrial Relations Officer of the Claimant.
- 7.** The Claimant asserts that the claim dated 15th April 2024 is not time barred and should be heard on its merits, arguing that the Respondent's objections are misguided and legally unsustainable.
- 8.** It avers that on 15th April 2024, it attempted to file the claim, but was unable to do so due to a system downtime in the court's case tracking system (CTS), and that once the system was restored, the court registry successfully received, uploaded, and registered the claim on 19th April 2024 at 12:23 p.m., and generating an invoice. It states further that these steps demonstrate that the claim was

submitted within time, and the delay was caused by technical issues beyond the Claimant's control.

- 9.** The Claimant argues that the suit dated 15th April 2024 was properly filed within the statutory three-year limitation period. It avers that although the claim could not be lodged on 15th April due to a court system (CTS) outage, the system was restored on 19th April 2024, when the claim was uploaded, assigned a tracking number, invoiced, and filing fees paid.
- 10.** It states further that, according to court procedure and case law, a suit is deemed filed once fees are paid, and any subsequent registry or system errors, such as the CTS mistakenly indicating a filing date of 24th April, 2024, cannot invalidate the earlier effective filing date of 19th April 2024.
- 11.** The Claimant further disputes the Respondent's assertion that the suit is res judicata based on a Public Service Commission (PSC) decision, arguing that the PSC delayed addressing the grievant's appeals, failed to provide fair administrative action, and only acted after the Claimant had already filed this suit.
- 12.** The Claimant further states that the PSC is not a court of competent jurisdiction under Section 7 of the Civil Procedure Act and cannot determine claims reserved for the Employment and Labour Relations Court (ELRC), whose jurisdiction arises from the Constitution and statute. It avers

that the issues before the ELRC extend beyond those before the PSC, involving constitutional and labour rights that the PSC cannot adjudicate.

- 13.** The Claimant avers that the grievant pursued internal, statutory, and conciliation mechanisms diligently, but remained dissatisfied, prompting him to seek judicial relief.
- 14.** It avers that the prolonged dispute has caused the grievant severe emotional hardship.
- 15.** The Claimant argues that striking out the suit would violate the grievant's constitutional rights to access justice and a fair hearing, and prays that the instant application be dismissed with costs and the claim proceeds to a full hearing on the merits.

Determination

- 16.** Section 89 of the Employment Act 2007, provides thus: -
“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 in the case of continuing injury or damage within twelve months next after the cessation thereof.”

- 17.** The letter by the Respondent terminating the grievant's employment is dated 20th April, 2021, and indicates that the termination takes effect on 21st April, 2021. The Court of Appeal in **David Ngugi Waweru v Attorney General & Another (2017) eKLR**, held that the time of dismissal or termination is the time contained in the letter of termination/dismissal and not the time of conclusion of internal disciplinary mechanisms.
- 18.** By the foregoing decision, there is no doubt that the cause of action in respect of the suit herein begun to run on 21st April, 2021, and by simple arithmetic, the suit herein should have been filed on or before 21st April, 2024.
- 19.** The question then is when exactly this suit was filed. The claim before the court is dated 15th April, 2024, but the Respondent contends that it was actually filed on 24th April, 2024.
- 20.** The Claimant maintains that it attempted to file the suit on 15th April, 2024, but the Case Tracking System (CTS) was down on that day and that once the CTS was restored, the claim was uploaded, acknowledged, invoiced, and paid for on 19th April 2024 at 12:23 pm.
- 21.** The law is settled that a suit is deemed filed when filing fees are paid, and subsequent registry mistakes cannot prejudice a litigant. In the case of **Mombasa Cement Ltd v**

Speaker, National Assembly & Another (2018) eKLR,
the court held that: -

“Filing of a civil case requires payment of filing fees, and once fees are paid, the suit is properly filed. Registry errors cannot invalidate the filing date.”

- 22.** It is not disputed that the claim was indeed uploaded on the CTS system on 19th April 2024, and this is evident from the court filing system. The same system further shows that an invoice was issued on the same date and that payment was fully made on that date.
- 23.** In the circumstances, it is evident that the suit herein was filed on 19th April, 2024, and not on 24th April, 2024 as the Respondent suggests. It then follows that, in line with Rule 24(6) of the Employment and Labour Relations Court Procedure Rules 2024, the claim is deemed to have been filed on 19th April 2024, which date is within the three year limitation period.
- 24.** Accordingly, I find and hold that the claim herein is not time barred.
- 25.** The Respondent has also opined that the Claimant’s suit is res judicata pursuant to Section 7 of the Civil Procedure Act on account of the Public Service Commission’s decision of 14th May 2025 on the grievant’s appeal.

- 26.** On its part, the Claimant contends that PSC delayed in handling the grievant's appeals, some submitted as early as 2023, in violation of Article 47 on fair administrative action. It further argues that the PSC's role is administrative, not judicial, and that it therefore lacks jurisdiction to determine claims reserved for this court.
- 27.** The Claimant further maintains that the PSC only acted after the suit herein was filed, and that the issues before the court include constitutional, labour law, and statutory rights, which the PSC cannot adjudicate.
- 28.** For *res judicata* to apply, the forum that issued the earlier decision must be a court of competent jurisdiction.
- 29.** In ***IEBC v Maina Kiai & 5 Others (2017) eKLR***, it was held that the doctrine of *res judicata* applies only where the earlier decision was issued by a tribunal with judicial authority over the subject matter. Further, in ***Muhia v Mutura (1999)***, the court emphatically held that a decision of a body without judicial authority cannot found a plea of *res judicata*.
- 30.** Further, under Article 162(2)(a) of the Constitution and the ELRC Act, this Court is the proper forum for employment disputes, and not the PSC.
- 31.** I thus find and hold that a decision of the PSC cannot oust the jurisdiction of this Court, hence its decision on the

grievant's appeal does not render the suit herein res judicata.

32. The upshot is that the Respondent's Notice of Motion dated 4th June, 2025, is devoid of merit and is dismissed in its entirety.

33. Costs shall abide the cause.

34. Orders accordingly.

SIGNED, DELIVERED, AND DATED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH DAY OF DECEMBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Otieno Present for the Claimant

Mr. Arunga Present for the Respondent

Ms. Esther S-C/A