

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E018 OF 2025

CHARLES NJERA OLUOCH.....CLAIMANT

VERSUS

**THE HON. ATTORNEY
GENERAL.....RESPONDENT**

RULING

1. Before this Court for determination is the Respondent’s Notice of Preliminary Objection dated 23rd May 2025. The Objection is anchored on the assertion that this Court lacks jurisdiction to hear and determine the present claim, as it is statute-barred and in contravention of the mandatory provisions of Section 90 (now Section 89) of the Employment Act, 2007.

2. Upon service of the Preliminary Objection, the Claimant, through his Counsel on record, filed Grounds of Objection contending *inter alia* that:
 - 1) ***The Preliminary Objection is legally untenable, fatally defective, incurable, and premature, offending the guiding principles/ threshold***

- bolstered in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696.*
- 2) The Claim raises a continuing injury and/or violation of the Claimant's rights under Articles 27, 41, 47 and 48 of the Constitution of Kenya, 2010, including the right to fair labor practices, equality before the law, fair administrative action, and access to justice.*
 - 3) Section 90 of the Employment Act, cannot override the supremacy of the Constitution.*
 - 4) The Objection is oppressive and draconian, seeking to defeat the right to access to justice & fair hearing protected under Articles 48 & 50 of the Constitution, and to bar the Claimant from accessing judicial remedies due to a statutory interpretation divorced from the context of justice.*
 - 5) The Objection is an affront and a blatant attempt to immunize the State from accountability for sustained violations of the Claimant's fundamental rights under Articles 27, 41, 47, and 48 of the Constitution.*
 - 6) The Preliminary Objection amounts to a procedural ambush intended to defeat substantive justice and must be discouraged as per the overriding objectives of the court under Section 3 of the Employment*

and Labour Relations Court Act and Article 159(2)(d) of the Constitution which mandates the court to administer justice without undue regard to procedural technicalities.

Submissions

3. The Preliminary Objection was canvassed by way of written submissions. Both parties filed written submissions, which the Court has duly considered.

Analysis and Determination

4. It is evident that the sole issue for determination is whether the suit herein is time-barred.
5. The essence of the Respondent's Objection is that the claim was lodged more than three years after the cause of action arose.
6. In support of the Objection, the Respondent contends that the Claimant's employment was terminated in January 2009, yet the claim before the Court was filed in May 2025, well beyond the mandatory three-year limitation period prescribed under Section 89 of the Employment Act.

7. Opposing the Objection, the Claimant submits that since 2009, he has consistently engaged in administrative efforts, including writing letters, seeking clarifications, making formal applications, and engaging relevant authorities, all in an attempt to address what he considers an unresolved entitlement. In his view, this reflects a continuous pension-related pursuit.
8. Section 89 of the Employment Act provides that a suit founded on a contract of service, such as the one presently before the Court, cannot be maintained after the expiry of three years from the date the cause of action arose.
9. A cause of action denotes a factual situation that, once established, entitles an individual to seek a remedy from the Court against another party. In addressing this issue, the Court of Appeal in **Attorney General & another v Andrew Maina Githinji [2016] eKLR** stated 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 which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not...having found that the cause of action arose on 2nd February, 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 barred as at 1st February, 2013, and I so hold.”

10.Guided by the foregoing precedent, it is evident that in matters involving termination of employment, a cause of action typically arises when the employment relationship is effectively brought to an end.

11.In this case, the record shows that the Claimant was dismissed from service with effect from 1st January 2009. However, the letter communicating his dismissal is dated 26th January 2012. Accordingly, the cause of action could only have arisen on the date he became aware of his dismissal, as opposed to the date indicated in the letter of dismissal.

12.The record further indicates that the Claimant appealed his dismissal through a letter dated 13th February 2012, and again through a subsequent appeal dated 24th January 2014. By a letter dated 24th April 2014, the Public Service Commission notified him that his appeal had been disallowed. A further communication dated 28th August 2014 conveyed that his application for review of the decision to dismiss him from service had been disallowed.

13.Applying the reasoning in **Attorney General & another v Andrew Maina Githinji [supra]**, to the present case, it is clear that by 26th January 2012, when

he was notified of his dismissal, the Claimant possessed all the material facts necessary to initiate legal proceedings against the Respondent.

14. The Claimant filed the instant claim on 15th January 2025, far outside the three-year limitation period set under Section 89 of the Employment Act.

15. What's more, it is evident that as at 28th August 2014, the Claimant was fully aware of the outcome of both his appeal and application for review. It therefore remains unclear why he did not move the Court to challenge his dismissal from service within the statutory timeframe.

16. In light of the foregoing, it goes without saying that by the time the Statement of Claim was filed on 15th January 2025, it was already statute-barred.

17. It bears to note that Section 89 of the Employment Act is couched in mandatory terms, and the limitation period prescribed therein is not amenable to extension. On this score, the Court concurs and is bound by the pronouncements of the Court of Appeal in the case of **Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR**, where it was expressed thus:

“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the Employment Act 2007 which we have quoted verbatim herein above, is in mandatory terms. A

claim based on a contract of employment must be filed within 3 years.”

Underlined for emphasis

18. As affirmed in the case of **Thuranira Karauri v Agnes Ncheche [1997] eKLR**, the question of limitation goes to the root of a Court’s jurisdiction. As such, a suit filed outside the prescribed statutory period divests the Court of the jurisdiction to hear and determine it.

19. In the circumstances, the Preliminary Objection dated 23rd May 2025 is upheld, and the Claim dated 15th January 2025 is hereby struck out for being time-barred.

20. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 1st day of December 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant	No appearance
For the Respondents	No appearance
Court Assistant	Mohammed

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 had been guided by Article 159(2)(d) of 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 the Constitution and the provisions of **Section 1B of the 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.

STELLA RUTTO

JUDGE

ORIGINAL