

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**

**MISCELLANEOUS APPLICATION NO E094 OF 2025**

**HASSAN MASHETI SWALEH.....**  
**.....APPLICANT**

**VERSUS**

**UMMA UNIVERSITY.....**  
**.....RESPONDENT**

**RULING**

**Background**

1. The Applicant has filed the application dated 3<sup>rd</sup> April 2025 seeking leave to file suit against the Respondent out of time. The application is brought under various provisions of law including sections 27 and 28 of *the Limitation of Actions Act*, Order 37 rule 6 of *the Civil Procedure Rules*, sections 12 and 90 of *the Employment Act*, rule 17 of *the Employment and Labour Relations Court (Procedure) Rules* and section 3A of *the Civil Procedure Act*.
2. The Applicant avers that the Respondent hired his services as a part time lecturer as from 4<sup>th</sup> September 2017. He further contends that the Respondent gave him additional responsibilities as a Human Resource Manager from 4<sup>th</sup> January 2021. It is his case that he continued to serve the Respondent in the two positions until the latter unlawfully terminated his contracts on 31<sup>st</sup> January 2022.
3. The Applicant avers that he filed suit before the Magistrate's Court at Kajiado to challenge the Respondent's decision.

However, he contends that the court dismissed the suit because it lacked jurisdiction to entertain it.

4. The Applicant avers that by the time the aforesaid decision was delivered, the time for filing a fresh suit in a court with jurisdiction had lapsed. Hence the application for enlargement of time.
5. The Applicant avers that the dismissal of his case was not on the merits of the suit but on technicalities of jurisdiction. He contends that he has a genuine claim against the Respondent which should be considered on the merits.
6. The Applicant avers that he filed suit before a court without jurisdiction out of mistake owing to the fact that he was acting in person. He asserts that he was unaware of the implications of Gazette Notice No. 6024 of 2018 which fixes a threshold of Ksh. 80,000.00 for matters which a Magistrate's Court can handle.
7. The Applicant avers that he stands to suffer irreparable prejudice if his request for leave to file suit out of time is not allowed. As such, he contends that it is in the interest of justice that the court allows the motion.
8. The Respondent has opposed the application. It has filed a replying affidavit through one Siana Amin to anchor its disapproval of the motion.
9. The Respondent contends that the cause of action in the proposed suit arose on 31<sup>st</sup> January 2022 when the Applicant's contract was allegedly improperly terminated. It contends that in terms of section 90 of *the Employment Act*, the Applicant ought to have filed suit within three years of

the aforesaid cause of action, that is to say by 31<sup>st</sup> January 2025. As such, it contends that any suit which may be filed after this date will be time barred.

10. The Respondent avers that the law does not grant this court the power to enlarge time to file suit out of time. It contends that if the court allows the application, it will be arrogating itself powers which it does not have in law.

### **Analysis**

11. The parties agree that the event that informed the dispute between them occurred on 31<sup>st</sup> January 2022 when the Applicant's contracts of service were terminated. As such, they agree that the cause of action in respect of their employment relation accrued on the aforesaid date.

12. Section 89 (previously section 90) of *the Employment Act* provides as follows:-

*“Notwithstanding the provisions of section 4(1) of the 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.”*

13. This provision sets a time bar for instituting claims that arise from an employment relation. The claims must be filed within three years from the time of accrual of the cause of action.

14. The only exception to the bar relates to continuing injury claims. These category of claims ought to be filed within twelve months of cessation of the injury or termination of the contract of service whichever happens earlier.
15. The provision makes it clear that the provisions on limitation of action under *the Limitation of Actions Act* do not apply to contracts of service. As such, the Applicant cannot invoke provisions of this Act to anchor his request.
16. A look at the aforesaid provision further reveals that it does not grant the court power to enlarge time to file proceedings arising from employment relations outside three years. As such, this court has no jurisdiction to grant the instant request.
17. That the court has no such jurisdiction has been affirmed in a plethora of decisions. For instance, in ***Maweu v Safaricom Ltd [2025] KEELRC 1441 (KLR)***, the learned Judge, whilst rejecting a similar request to enlarge time to file suit out of time expressed herself as follows:-

*"... I find and hold that time under Section 90 of the Employment Act, 2007, cannot be extended."*

18. In ***Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] KECA 257 (KLR)***, the Court of Appeal stated on the subject as follows:-

*".. 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. As this Court stated in the case of Divecon Limited -vs- Samani [1995-1998] 1 EA*

*P.48, a decision relied upon by Radido, J. in Josephat Ndirangu - vs - Henkel Chemicals (EA) Limited, [2013] eKLR, the limitation period is never extended in matters based on contract..."*

19. In ***Njunge v. Muasya (Appeal E040 of 2023) [2024] KEELRC 265 (KLR)***, the court, addressing section 90 of the Employment Act, observed as follows:-

*"A plain reading of the above section clearly shows that it is couched in mandatory terms. That is to say "no action shall lie 'which implies that once the three year period lapses, no civil action shall lie on a claim based on the Act or contract of employment. Further, it is important to note that an action arising out of a contract of employment is an action based on contract. Therefore, under the Limitation of Actions Act which previously governed contracts generally, including contracts of employment, no extension was permissible once the limitation period lapsed. "*

20. In ***Bosire v Telkom Kenya Limited & another [2024] KEELRC 2410 (KLR)***, the court observed on the subject as follows:-

*"The law is clear. As held in the case of Michira & 41 others v Aegis Kenya Limited t/a Leopard Beach Hotel (supra) it was held that section 90 is framed in mandatory terms and that a claim based on a contract must be filed within 3 years. Put another way, a cause must be presented within the time lines provided in law and any claim filed beyond its statutory time limit is*

*dead on arrival. It is incapable of resuscitation as the law does not provide the architecture, the surgical tools for such an exercise. Since the patient was unresponsive when presented to the hospital, we have to pronounce its time of death as 3 years from the accrual of cause of action in June 2011 i.e. June 2014. The Court agrees it is bereft of jurisdiction to extend time for suits not filed within 3 years."*

**Determination**

21. Having regard to the foregoing, it is apparent that the instant application is bad in law. It cannot be entertained.
22. As such, it is dismissed.
23. Costs of the motion are granted to the Respondent.

**Dated, signed and delivered on the 15<sup>th</sup> day of December, 2025**

**B. O. M. MANANI  
JUDGE**

In the presence of:

..... for the Applicant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC**

**Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**B. O. M MANANI**

ORIGINAL