

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

CAUSE NO. E215 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

IRENE CHESANG CLAIMANT

VERSUS

**RURAL ELECTRIFICATION & RENEWABLE
ENERGY CORPORATION (REREC)
(formerly known as; RURAL
ELECTRIFICATION AUTHORITY) RESPONDENT**

RULING

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 21st February, 2025 and sought the following reliefs:-
 - (a) *That the summary dismissal of the Claimant be declared unlawful.*
 - (b) *That the Claimant be reinstated to her employment forthwith.*
 - (c) *Costs of the suit.*

- (d) *Interest on 3 above at Court rates.*
- (e) *That an order be made reinstating the Claimant to her employment position as at the time of dismissal and full payback from the date of dismissal to date, including all leave days.*
- (f) *Any other or further relief that the Court may deem just and fit to award.*

2. The Claimant pleaded, **inter-alia**:-

- (a) *that she (the Claimant) was initially appointed by the Respondent to the position of Assistant Human Resource Officer vide a letter dated **21st December, 2012 (effective 1st January, 2013)**, and was, vide a letter dated 30th June, 2017, appointed to the position of Acting Chief Human Resource Officer.*
- (b) *that on **11th December, 2018**, the Respondent purported to dismiss the Claimant summarily without a hearing, accusing her of forgery and making false documents.*
- (c) *that this [accusation] translated to Anti-Corruption Case No. E002 of 2021 (Milimani), and that the*

Respondent lost the case and the Claimant was acquitted of all the charges.

*(d) that disciplinary proceedings were conducted **on 11th December, 2018** after the Claimant's dismissal and in her absence; hence the Claimant was not accorded an opportunity of being heard.*

*(e) that the Claimant filed an appeal against her dismissal, which was heard by the Respondent on **16th July, 2019.***

(f) that the Respondent acted against labour laws and failed to follow the applicable procedure.

3. The Respondent entered appearance and filed a Notice of Preliminary Objection dated 13th May, 2025; objecting to this Court's jurisdiction on ground:-

(a) That the *claim is statute barred*, having been commenced after three years from the time of termination contrary to the provisions of Section 90 of the Employment Act, 2007.

4. On 9th July, 2025, I directed that the Preliminary Objection be canvassed by way of written submissions, and ordered both

parties to file written submissions within stated timelines. Written submissions have since been filed.

5. The Claimant's claim (suit) herein **is shown to have been filed in Court on 18th March, 2025, over six (6) years from the date of termination of the Claimant's employment on 11th December, 2018.**
6. Section 89 of the Employment Act, 2007 **(formerly Section 90)** states as follows:-

“90. 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 cessation thereof.”

7. The suit herein was clearly filed **outside the three years limitation period** provided by statute, and is therefore **statute-barred**. This Court cannot, therefore, entertain, hear or determine the suit, in the circumstances. It is divested of Jurisdiction to do so. The Respondent's Preliminary Objection is founded on a pure point of law.

8. A cause of action, on the part of the Claimant, arose on **11th December, 2018** when her employment was summarily terminated, but not on the date of her acquittal by the Anti-Corruption Court as implied in the Claimant's written submissions filed herein. The Court of Appeal stated as follows in **David Waweru Ngugi - vs - Attorney General & Another [2017] KECA 420 (KLR):-**

"20. Finally, this Court has had occasion to grapple with the issue of defining a cause of action and determining when it arises in a contract of employment. In the case of Attorney General & Another - vs - Andrew Maina Githinji & Another [2016] eKLR, Waki, JA with whose decision Kiage, JA agreed,

**examined the same issue and stated in part,
as follows:-**

“7. The critical question to ask, which I will endeavour to ask, is this: What is a cause of action and when does it arise in a claim for unfair/wrongful termination? . . .

8. “A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.” That definition was given by Pearson J. in the case of *Drummond Jackson - vs - Britain Medical Association (1970) 2 WLR 688 at page 616*. In an earlier case, *Read - vs - Brown (1889), 22 QBD 128, Lord Esher, M.R* had defined it as:-

“Every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the Judgment of the Court.”

9. In the case of **Peter Ndaka Mutavi - vs - Pembe Flour Mills Limited (2020) eKLR**, the Court stated as follows:-

“There is no provision in law that time stops running during the period when an employee is awaiting conclusion of a criminal case. In the case of *Kenya Electrical Trades & Allied Workers Union - vs - Kenya Power and Lighting Company Limited [2015] eKLR*, the Court held that time does not stop running while an employee is facing criminal charges.”

10. Courts have, over the years, gone further and held that once the statutory limitation period lapses, Courts lack jurisdiction to extend the same. The Court of Appeal stated as follows in the case of **Beatrice Kahai Adagala - vs - The Postal Corporation of Kenya [2015] eKLR**:-

“13. It may very well be that the appellant was let down by her erstwhile lawyers who filed her claim out of time. . . .

14. Much as we sympathise 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 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 *Divicon Limited - vs - Samani [1955 - 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. The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of Sections 27 and 28 of the Limitation of Actions Act.”

11. That said, and having considered written submissions filed on behalf of both parties herein, the Respondent’s Preliminary Objection is upheld, and the Claimant’s suit herein is hereby struck off for being statute-barred.

12. Each party shall bear its own costs of the suit.

13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
16TH DAY OF JANUARY 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Jaoko for the Claimant

Mr. Kipyegon for the Respondent

ORIGINAL