

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA

CAUSE NO. E043 OF 2025

SAMINI WILSON DZOMBO CLAIMANT

VERSUS

KENYA POWER & LIGHTING COMPANY LIMITED
RESPONDENT

RULING

The respondent, Kenya Power & Lighting Company Limited, filed Notice of Preliminary Objections dated 29 July 2025 on the basis that the court lacks jurisdiction to hear and determine the suit as the same is time-barred and in violation of section 89 of the Employment Act (the Act), which requires claims be filed within 3 years and section 4(1) of the Limitation of Actions Act to which section 89 of the Act envisage that actions in contract have a 6 years limit.

The respondent submitted that the claimant filed his suit on 16 April 2025, on the basis that the respondent terminated his employment by means of a notice of dismissal dated 14 April 2022. He is seeking compensation. Unpaid half salary, notice pay, an order of reinstatement back to his position since March 2016, and costs.

The basis of the claim is that the claimant was employed by the respondent as a technician in 2013. On 5 October 2015, he was arraigned in Kwale Criminal Case No. 1091 of 2015. On 14 April 2022, his employment was terminated, and he hence claims damages.

The respondent submitted that the cause of action arose upon the termination of employment. Under section 89 of the Act, he had 3 years to urge his case. As of 14 April 2022, 3 years have elapsed, and no claim has been filed. The suit filed on 16 April 2025 is time-barred under section 89 of the Act.

In the case of **Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR**, the court held that section 90 [89] of the Act is couched in mandatory terms. A claim before the court must be filed within 3 years from the date the cause of action arose. In **John Kiiri Njiiri v University of Nairobi [2021] eKLR**, the court reiterated that section 89 of the Act is mandatory.

The suit herein should be dismissed with costs.

The claim submitted that he filed his suit on 19 April 2025, following his dismissal through notice dated 14 April 2022. He was allowed one year's right of appeal. The claimant wrote to the respondent that he was not able to appeal due to the ongoing criminal proceedings against

him. The criminal charges were tied to the termination of employment, and hence, it was important to complete that process before making his appeal.

The claimant submitted that he was charged in Kwale Criminal Case No. 1091 of 2015, which is related to these proceedings. He was acquitted on 29 August 2024. He immediately filed this suit on 19 April 2025.

The respondent's objections under section 89 of the Act are invalid, as the claim was filed within time. The time to file an appeal was not addressed here; the claimant had the latitude to file his suit within time.

Determination

The claim herein is premised on facts that, through a letter and notice dated 14 April 2022, the respondent terminated his employment. Under paragraph 2.5 of the Memorandum of Claim, the claimant asserts that upon the termination of his employment, he was allowed the right of appeal within one year.

Under section 89 of the Act, a claim premised on the employment relationship under the Act must be addressed within 3 years from the date the cause of action arose. In a continuing injury, the claim must be made within 12 months from the date the act complained of ceased, as held in Kimorna & 207 others v Kerio Valley Development Authority [2025] KEELRC 2777 (KLR).

The Act under section 89 requires that:

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.

In **Attorney General & another v Andrew Maina Githinji & another [2016] KECA 817 (KLR)**, the court emphasised that in employment claims, the cause of action accrues with cessation of employment. The letter and notice ending the employment relationship, despite the right of appeal, gives rise to a cause of action.

The employee must therefore address any claim arising out of the termination of employment upon the notice terminating his employment. In this case, once the claimant received the termination notice on 14 April 2022, the termination took effect, and the cause of action accrued; that was the date from which the time began to run.

Section 89 of the Act is couched in mandatory terms. The time provided therein is not elastic and, hence, incapable of enlargement. The Court of Appeal, while dealing with the issue of limitation in the case of **Beatrice Kahai Adagala v Postal Corporation of Kenya [2015]**

eKLR, held that their hands were tied under Section 89 of the Act, because it is in mandatory terms that a claim based on a contract of employment must be filed within 3 years. In **David Ngugi Waweru v Attorney General & Another [2017] eKLR**, the Court of Appeal held that there is no room to extend time in cases of limitation under Section 89 of the Employment Act. Time started running immediately after the notice terminating the employment relationship was issued.

The cause of action arises from the notice dated 14 April 2022. See **James Mugeria Igati vs. Public Service Commission of Kenya [2014] eKLR**; **Benjamin Wachira Ndiithi vs. Public Service Commission & another [2014] eKLR**; **Boniface Inandi Otieno vs. Mehta Electricals Limited [2014] eKLR** and **Geoffrey Kiragu Njogu vs. Public Service Commission & 2 others [2015] eKLR**.

In this case, the claimant had until 13 April 2025 to file his claim from 14 April 2022. A claim filed a day late is time-barred pursuant to section 89 of the Act.

The respondent's objections that the suit is time-barred, having been filed on 19 April 2025, are well-founded. This denies the court jurisdiction to hear and determine a time-barred claim.

The suit herein is dismissed with costs to the respondent.

Delivered in open court at Mombasa, this 22nd day of January 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

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